

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-4057

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 77-4057, 77-4067,
77-4068, 77-4073,
77-4074, 77-4075

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, ET AL.,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION

AND UNITED STATES OF AMERICA,

Respondents,

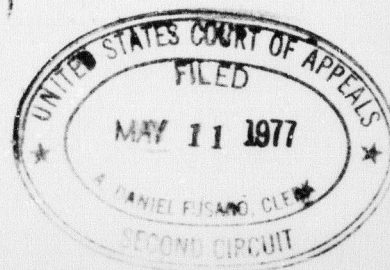
MCI TELECOMMUNICATIONS CORP., ET AL.,

Intervenors.

On Petition for Review of Orders of the
Federal Communications Commission

JOINT APPENDIX TO THE BRIEFS

VOLUME II





PAGINATION AS IN ORIGINAL COPY

JOINT APPENDIX TO THE BRIEFS

VOLUME II

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The Complainant, American Trucking Associations, Inc., 1616 P Street, N. W., Washington, D. C. 20036, shows as follows:

1. That Complainant is the national trade association of the motor carrier industry; and as such participated in numerous proceedings involving the rights of individual motor carrier companies to operate private radio systems (mobile and point-to-point microwave) and to secure for such companies favorable tariff treatment in their use of communication facilities offered by AT&T, (e.g., TELPAK Dockets 14251 and 17547). Complainant is presently participating on behalf of the motor carrier industry in the pending proceeding in Docket 18128.

2. That Defendant, American Telephone and Telegraph Company, 195 Broadway, New York, New York 10007, is an interstate common carrier fully subject to the provisions of the Communications Act of 1934, as amended.

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3. That the rights asserted in this complaint are the rights of the individual motor carrier companies which were leasing interstate private line communication facilities from Defendant pursuant to the Shared TELPAK provisions of AT&T Tariff F.C.C. No. 260 until the right to share TELPAK was eliminated by Defendant effective December 12, 1971. Accordingly, the term "Complainant", as used herein, denotes and includes such individual motor carriers.

4. That on October 12, 1971, Defendant filed a tariff revision abolishing TELPAK sharing, effective December 12, 1971.

5. That Defendant's tariff filing eliminating the TELPAK sharing regulation was made in response to the Commission's Decision and Order on Remand released September 13, 1971 ordering Defendant (and The Western Union Telegraph Company) within thirty days from release of that Order to file tariff revisions, effective on sixty days' notice, eliminating the unlawful discrimination the Commission found to exist in the TELPAK sharing provisions, in its decision in Docket 17547. The TELPAK sharing provisions which were found to be unlawfully discriminatory accorded sharing rights to the government, the right of way companies and the companies whose rates and charges were regulated by a governmental authority, e.g., the railroads, buses, trucks, and airlines.

6. That Defendant in purporting to eliminate the discrimination found to exist in the aforesaid TELPAK sharing provisions by

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abolishing TELPAK sharing magnified the unlawful discrimination found to exist, insofar as the motor carrier industry is concerned, by continuing in effect paragraph 2.2.1(G) of AT&T Tariff No. 260. This paragraph grants the airlines the right to share TELPAK as a "single customer" by allowing the airlines to group their private line requirements by ordering their circuits through the agency of Aeronautical Radio, Inc. ("ARINC").

7. That, specifically, paragraph 2.2.1(G) of AT&T Tariff F.C.C. No. 260 provides as follows:

"A private line service may be used for one or more of the purposes specified in (A) through (G) following.

* * *

"(G) For the transmission of communications to, from, within and between air carriers, where the customer is an aeronautical communications company licensed under the Aviation Services rules of the Commission to operate stations in the aeronautical mobile and fixed services."

8. That the motor carrier industry competes with the airlines for the transportation of freight and that this competition is growing in intensity as the freight carriage capacity of aircraft continues to increase.

9. That the inability of the motor carrier industry to group their private line requirements in a manner similar to that permitted the airlines under the aforesaid single customer tariff regulation, because of the refusal of AT&T to extend the single customer treatment to the motor carrier industry (as more fully

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alleged below) constitutes an unlawful discrimination and preference in favor of the air segment of the transportation industry and has damaged the motor carrier industry.

10. That the discriminatory single customer provision of paragraph 2.2.1(G) of AT&T Tariff F.C.C. No. 260 was included in the tariff by Transmittal No. 10537 dated July 31, 1969, effective September 1, 1969, as a result of negotiations between ARINC as representative of the airlines and Defendant conducted during the pendency of the Shared TELPAK proceeding. See Exhibit A, a copy of a letter dated June 26, 1969 from ARINC to Defendant.

11. That the undertaking by Defendant during the pendency of the Shared TELPAK proceeding of negotiations with ARINC on behalf of the airlines, while ARINC and the airlines were parties to the Commission's proceeding in Docket 17547, constituted a deliberate act on the part of Defendant of according an unlawful preference for the air segment of the transportation industry and establishing an unlawful discrimination against the land segment of that industry.

12. That after Defendant filed its tariff revision to become effective December 12, 1971 eliminating TELPAK sharing, Defendant refused and continues to refuse to extend the single customer tariff regulation to the motor carrier industry, thus magnifying and aggravating the unlawful preference for the airlines and discrimination against the motor carriers.

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13. That on October 26, 1971, Complainant filed with the Commission a letter asserting that, in view of the prospective elimination of TELPAK sharing provisions, fairness required that the benefits of single customer treatment be extended to the motor carrier industry. This letter was treated by the Commission as an informal complaint and transmitted to Defendant for comment on November 12, 1971. By letter dated December 3, 1971, attached hereto as Exhibit B, Defendant refused to satisfy the informal complaint, contending that the considerations which justified the single customer provision for the airlines were not applicable to the motor carrier industry. ^{*}/

14. That by letter of December 29, 1971, attached hereto as Exhibit C, Complainant again requested Defendant to extend the single customer treatment to the motor carrier industry, supplying a detailed justification for according this treatment to the motor carrier industry based on (1) the adverse competitive impact of ARINC's single customer treatment on the motor carrier industry; (2) the fact that ATA has assumed responsibility for providing an integrated communications network for motor carriers analogous to the role and responsibility of ARINC; and (3) the fact that the national private line communication network serving the motor carrier industry would enhance both the safety and efficiency of motor carrier operations in much the same way the network operated by ARINC has been recognized by AT&T to contribute to the safety and efficiency of air carrier operations.

^{*}/ The Commission notified Complainant of the refusal by letter of December 10, 1971. (Exhibit B1)

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15. That subsequent to the sending of the above-mentioned letter by Complainant to Defendant, meetings were held between representatives of Complainant, Defendant and the Commission's staff relative to Complainant's request for single customer treatment. As a result of these meetings, a letter similar to the one contained in Exhibit C was sent on March 2, 1972 by Complainant's counsel to the Chief of the Common Carrier Bureau of the Commission. In response thereto, the Chief of the Common Carrier Bureau, by letter dated March 17, 1972, copy attached as Exhibit D, advised Complainant's counsel on March 17, 1972 that the Bureau would not, on its own motion, interpose any objection to AT&T putting into effect a tariff revision extending to the motor carrier industry the same single customer status that is now given to the airlines.

16. That by letter dated March 20, 1972, copy attached as Exhibit E, Complainant's counsel transmitted a copy of the letter from the Chief of the Common Carrier Bureau to the Defendant expressing an expectation that the favorable reply of the Chief of the Common Carrier Bureau would permit Defendant promptly to extend single customer status to the motor carrier industry.

17. That by letter dated April 12, 1972, copy attached as Exhibit F, Defendant again declined to accord single customer treatment to the motor carrier industry.

18. That Defendant's refusal to accord single customer

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status to the motor carrier industry following the Common Carrier Bureau's advice that it would not oppose an extension of this treatment to the motor carrier industry constitutes not only an unjustified and unlawful discrimination against the land transportation industries but also a willful violation by Defendant of its obligations as a common carrier of not making or giving any undue or unreasonable preference or advantage to any particular class of persons.

19. That the single customer provision of paragraph 2.2.1(G) of AT&T F.C.C. Tariff No. 260, unless extended to the motor carrier industry, constitutes a violation of Sections 201(b) and 202(a) of the Communications Act of 1934, as amended.

20. That in according single customer treatment to the airline industry but not the motor carrier industry, Defendant, in view of the facts recited above, is knowingly violating Section 202(a) of the Communications Act by according an undue and unreasonable preference and advantage to the airlines; and that this knowing violation of Section 202(a) subjects Defendant to the penalties provided for in Section 202(c) of the Communications Act.

Request For Damages

21. That for the reasons set forth above, Complainant makes claim for damages against Defendant.

22. That the damages herein requested are sought on behalf

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of all motor carriers which shared TELPAK prior to December 12, 1971 and lost the sharing rights after that date and thereafter were required to pay for their private line facilities the regular private line IXC tariff without the benefit of TELPAK discounts.

23. That Defendant has full and complete records indicating the amounts paid by the motor carriers sharing TELPAK for private line facilities on December 12, 1971 when the sharing rights were discontinued, and the amounts paid by the same motor carriers thereafter. ^{*/}

24. That, as an individual example, Roadway Express, Inc., a motor carrier which lost its Shared TELPAK rights on December 12, 1971 and has not been able to obtain TELPAK discounts because of Defendant's refusal to accord the motor carrier industry single customer treatment, has been paying the following increased monthly charges for its private line facilities, formerly priced as TELPAK:

<u>Circuit</u>	<u>Shared Telpak</u>	<u>Current IXC</u>
FP-13688	\$ 579.12	\$1,407.00
FP-13689	1,819.10	2,509.10
FP-13696	1,681.98	2,788.40

25. That, in accordance with the Commission's decision in Hughes Sports Network, Inc. v. AT&T (FCC 72-377) ___ FCC 2d ___, 24 RR 2d 220, released May 1, 1972, the measure of damages is the difference between the amounts paid by the motor carriers under the IXC rate and the TELPAK rate as of December 12, 1971 if the Commission concludes, as a result of this complaint, that the single customer

^{*/} See attached Exhibit G and Attachment A thereof.

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provision of AT&T's tariff was unlawfully discriminatory and granted an unreasonable preference to the airlines as against the motor carrier industry.

WHEREFORE, Complainant requests:

(a) That the Commission direct AT&T to satisfy this complaint by revising forthwith paragraph 2.2.1(G) of its Tariff F.C.C. 260 to accord the motor carrier industry the same single customer treatment as is now available to the airline industry; and that this could be accomplished by revising paragraph 2.2.1(G) to read as follows:

"For the transmission of communications to, from, within and between air carriers, railroads, or truck and bus companies which are regulated carriers of passengers or property, where the customer is an entity, not operated for profit, which furnishes communications services to such carriers in the same line of business; provided, there shall be no more than one such customer for each category of such carriers."

(b) That Defendant be ordered to forfeit to the United States the sum prescribed in Section 202(c) for each and every day following December 12, 1971 during which single customer treatment was not available to the motor carrier industry; and

(c) That Complainant on behalf of the motor carrier industry be awarded damages for the excessive payments made following December 12, 1971 for private line facilities leased by the motor carriers which formerly subscribed to such facilities under the Shared TELPAK provisions of AT&T Tariff F.C.C. No. 260, with the

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damages assessed in accordance with the Commission's decision in the
Hughes Sports Network case, supra.

Respectfully submitted,

American Trucking Associations, Inc.

Dated: June 7, 1972



AERONAUTICAL RADIO, INC.

2351 RIVA ROAD, ANNAPOLIS, MARYLAND 21401

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June 26, 1969

American Telephone & Telegraph Co.
195 Broadway
New York, New York 10017

Attention Mr. William M. Ellinghaus

Gentlemen:

As you know, ARINC's efforts to obtain a network of private line channels have been the subject of several conferences and correspondence during the past two years. In the course of this exchange of views, a difference of opinion has existed as to ARINC's customer status under AT&T tariff regulations with respect to certain categories of traffic, such as intra and inter air carrier communications. Nevertheless, these discussions, we believe, have resulted in a mutual understanding of problems underlying tariff regulations on the use of private line services, and the uniqueness of the ARINC relationship to the operating air carriers which make use of the nationwide inter-city aeronautical private line network. We would now like to pursue this matter in terms of an appropriate tariff revision dealing specifically with the questions which have arisen.

ARINC from the inception of its operations has been a private communications company, operated not for profit, to provide facilities for communications for the conduct of air carrier and other aircraft operations. The nature of ARINC's operations and the community of interest represented are rather clearly established and generally well known. During the first decade of operations, ARINC's high frequency radio system provided all communications services utilized in air transport operations, air-ground-air and point-to-point, the bulk of which was reservations traffic. ARINC's basic purpose has remained the same throughout the forty year period of its operations. The validity of this purpose and recognition

June 26, 1969

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of the public interests served are well documented. See ARINC v. AT&T, 4 FCC 155 (1937). It is agreed that the use of ARINC's private line service for aeronautical traffic dealing directly with the safe, expeditious and economical operation of aircraft and the protection of life and property in the air is proper under Tariff F. C. C. No. 260, Regulation 2.2.1(A). But in the case of the air transport industry, virtually all communications are related in some degree to the safety of flight operations. Indeed the Commission has found "that a rapid, efficient, dependable, coordinated system of communications is necessary at all times for the safety of operations of airplanes on the airways." 4 F. C. C. 155, 163. Thus, in order to carry out its responsibilities most efficiently ARINC believes that it should be in a position to order and administer for the air carrier industry a nationwide aeronautical network provided by means of a private line service, capable of handling all categories of intra and inter company traffic relating to the conduct of the air carrier business. To meet these important and unique needs, it is requested that consideration be given to the filing of an appropriate revision to Tariff F. C. C. No. 260, Paragraph 2.2.1, to permit the intended usage of the proposed ARINC nationwide inter-city private line network.

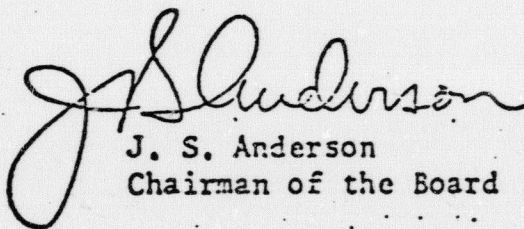
In anticipation of such an order, ARINC has determined the configuration of a nationwide network and the transmission carrier spectrum required between service points to serve the needs of all air carriers and other aviation concerns which are participants in existing ARINC Telpak administered and private line channels. In furtherance of this program, ARINC has received specific written requests for service from the ARINC private line inter-city network from all of the domestic trunk air carriers and international air carriers of the United States with one exception, and from all of the domestic local service air carriers of the United States with one exception, and with respect to each exception, we understand that those air carriers approve the request by ARINC for the removal of any tariff obstacle to the availability to ARINC of such an inter-city private line network. We are confident that all categories of aviation users support and endorse this ARINC program and we are aware of no opposition to it within the aviation community served by ARINC.

June 26, 1969

ARINC believes that its capability to provide a private line inter-city network to the aviation community will enhance the efficiency of air carrier operations, a goal which it has pursued throughout its forty year history of providing communications to the air transport industry.

Sincerely,

AERONAUTICAL RADIO, INC.

A handwritten signature in dark ink, appearing to read "J. S. Anderson". The signature is fluid and cursive, with a large initial "J" and "S".

J. S. Anderson
Chairman of the Board

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

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195 BROADWAY, NEW YORK, N. Y. 10007

212 393-3342

T. W. SCANDLYN
ASSISTANT VICE PRESIDENT

December 3, 1971

Mr. Kelley E. Griffith, Chief
Domestic Rates Division
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Griffith:

This is in response to your letter of November 12, 1971 (Reference 9310) transmitting a copy of the informal complaint of the President of American Trucking Associations, Inc. (ATA) dated October 26, 1971 and requesting that we satisfy the complaint or advise the Commission of our refusal or inability to do so.

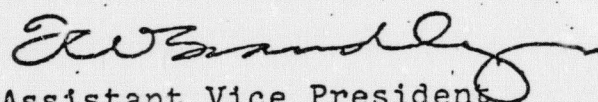
ATA's complaint relates specifically to Sec. 2.2.1(G) of AT&T's Tariff F.C.C. No. 260 which, in substance, permits Aeronautical Radio, Inc. (ARINC), as a customer, to order private line services for the transmission of communications of the air carriers which it serves. ATA does not complain that this tariff regulation is unjust or unreasonable, but states that in view of the prospective elimination of TELPAK sharing provisions, fairness requires that the benefits of "single customer" treatment embodied in that regulation must be extended to the motor carrier industry. This complaint is similar in substance to that made by counsel for National Retail Merchants Association which was transmitted with your letter of August 24, 1971 (Reference 9310). A copy of our reply to the latter complaint, dated September 7, 1971, is attached hereto.

As we noted in our letter of September 7; the tariff provision in question was filed by AT&T at the request of ARINC and on the basis of its representations that, in order to carry out its responsibilities most efficiently, ARINC should be in a position to order and administer for the airline industry a nationwide network of private line services to handle all categories of intra- and inter-carrier traffic relating to the air carrier business. AT&T's conclusion that ARINC's request was a reasonable one was reached in the light of these representations and in

substantial reliance on the fact that the Commission in an earlier decision (Aeronautical Radio v. American Telephone and Telegraph Co., 4 F.C.C. 155) had stated that ". . . safety of life and property in the air is the principal purpose for which [ARINC] was organized and is operating under its existing declaration of policy . . . Coordination [of radio and wire facilities] through a single agency will tend to promote the safety of life and property in the air." (4 F.C.C. 155, 162-63.) Thus, the reasonableness of the tariff provision in question rests upon a judgment that ARINC has unique operational characteristics and responsibilities which can be met most efficiently by permitting it, as a customer, to order and administer the communications requirements of the carriers which it serves. The provisions of Sec. 2.2.1(G) were not filed for the purpose of conferring any special rate advantage on the airline industry. ATA's assertion that failure to accord similar treatment to the trucking industry will place that industry at a significant competitive disadvantage raises issues of fact as to which we lack sufficient information to comment. ATA does not assert that it has a special role and responsibilities in the provision of an integrated communications network for truckers which are analogous to the role and responsibilities imposed upon ARINC, nor does it appear that the coordination of communications for the truckers through a single agency will tend to promote the safety of life and property in transit. In the absence of such a showing, or of a finding by the FCC to this effect, there would appear to be no basis for AT&T to amend its tariff so as to extend the "single customer" provision to the trucking industry.

Accordingly, it is our position that Sec. 2.2.1(G) of Tariff F.C.C. No. 260 is reasonable for the reasons set out in A.T. & T. Transmittal No. 10537 dated July 31, 1969 and that we are unable to satisfy the complaint of ATA.

Very truly yours,


Assistant Vice President

Attachment

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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December 10, 1971

IN REPLY REFER TO:

9310

Mr. William A. Bresnahan
President
American Trucking Associations, Inc.
1616 P Street, N. W.
Washington, D. C. 20036

Dear Mr. Bresnahan:

This is in reference to our previous correspondence concerning your complaint that motor carriers should be allowed the same benefits of "single customer" status and thus, sharing, as that allowed to the airlines by the telephone company in its Private Line Tariff, F.C.C. No. 260. We have received a reply from the telephone company in response to the inquiry which was made on your behalf. A copy of the company's letter of December 3, 1971, is enclosed for your information. We are also enclosing a copy of the letter to us on this matter from Aeronautical Radio, Inc. dated December 2, 1971.

It is noted the telephone company states that it is its position that the applicable tariff provisions in this matter are reasonable and that it is unable to satisfy your complaint.

As we are required to do under Part 1 of our Rules, you are advised that, if you wish to pursue this matter further, you are entitled to file a formal complaint with this Commission. Such formal complaints must be filed in accordance with Sections 1.721 through 1.735 of the Commission's Rules, copies of which are enclosed.

Sincerely yours,

Kelley E. Griffith
Kelley E. Griffith
Chief, Domestic Rates Division
for Chief, Common Carrier Bureau

Enclosures

Dealing first with the adverse competitive impact of ARINC's single customer treatment entitling it to order private line circuits for the air carrier industry at reduced TELPAK C and D bulk rates, the freight service offered by United States Airlines is becoming increasingly competitive with motor carrier service, particularly in long-haul operations, and, even in short hauls, on commodities of high value. This is brought about by the fact that direct operating costs (flying costs, maintenance and depreciation expenses) per ton-mile are now approaching the levels of motor carrier direct operating costs.

These aircraft operating costs have been substantially reduced from the days of the piston plane (17-25 cents per revenue ton-mile) to 8-9 cents per revenue ton-mile for the newer DC-8-F, and promise to fall even further as cargo service with the wide-bodied B747 and DC10 expands. These costs are certainly competitive with motor carrier direct operating costs of 5-5-1/2 cents per ton-mile. In fact, there are indications that on all cargo B747s, direct cost per ton-mile will be 5-1/2-7-1/2 cents with a cargo capacity of 200,000 pounds. Even greater economies are being experienced in the use of the B747's belly in passenger flights to carry as much as 72,750 pounds of cargo -- less than 500 pounds under the maximum Federal gross weight allowable for motor trucks on interstate highways. In fact, such a load is nearly 70 percent of the entire capacity of an all-cargo DC-8-F.

Air cargo traffic has grown at an annual rate of 7.5 percent since 1966, nearly five times the rate of motor carrier growth. Further, the Boeing Company foresees an annual growth rate of nearly 18 percent in the world air cargo market to 1980. If the domestic market increases at only half this rate, 9 percent, it will nearly double to 5.567 million ton-miles by 1980.

The conclusion is thus inescapable that, even barring any other internal airline cost reductions, to say nothing of additional direct or indirect governmental aid, the domestic air freight industry is aiming toward capacity for a substantial portion of the domestic freight transportation market, particularly with respect to those types of freight for which short delivery time is of high importance. This is the type of freight that makes up an appreciable portion of motor carrier traffic at the present time and for which air freight promises to increase its already formidable competition to the motor freight industry. As an indication of the present capability of air carriers to offer intense competition to motor carriers, I would call your attention to an article in Traffic World of December 27, 1971, p. 48, dealing with a tariff filed with the CAB by American Airlines "designed to maximize the diversion of freight from surface to air carrier." As justification for its proposal, the airline states, among other things, that it "would

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be able to compete for 69 percent of all shipments moved by highway common carriers, which in 1970 weighed less than 500 pounds, or 207 million shipments." Latest available statistics indicate that shipments weighing less than 500 pounds constitute about 71 percent of all shipments handled by ICC-regulated motor common carriers of general freight.

Turning next to ATA's role and responsibilities in providing an integrated communications network for motor carriers analogous to the role and responsibilities of ARINC, a firm decision has been made by ATA to assume this role and responsibilities for the motor carrier industry, either directly or through the industry's communications corporation, Highway Radio, Inc.^{1/} in administering for the trucking industry a nation-wide network of private line services designed to handle all categories of intra- and interstate communications traffic affecting the conduct of the motor carrier business.

Turning, finally, to the safety of life and property aspects of ATA's coordination of communications for the motor carrier industry, the national private line network contemplated will enhance both the safety and efficiency of motor carrier operations in much the same way in which the network operated by ARINC has been recognized by AT&T to contribute to the safety and efficiency of air carrier operations.

As long ago as 1945, the Federal Communications Commission in its report dated January 15, 1945, in Docket No. 6651, In The Matter Of Allocation Of Frequencies To The Various Classes Of Non-Governmental Services In The Radio Spectrum From 10 Kilocycles To 30,000 Kilocycles, recognized the importance of radio communications in enhancing the safety of motor carrier operations. Thus, at page 174 of the Report, the

^{1/} Highway Radio, Inc. is a corporation organized in May of 1945 under the laws of the District of Columbia. Its corporate powers include the sending and receiving of signals, messages and communications and the coordination of "the activities of the motor carrier industry in the use of communications systems to the end that a unified system of communication will be available to operators of motor vehicles on the highways of the United States." The corporate powers of Highway Radio, Inc., accordingly, include the operation of the private line communication system contemplated. Highway Radio, Inc. has from time to time held authorizations issued by the FCC in its private user mobile radio services and was first authorized to operate a mobile experimental radio system in the Chicago, Illinois area which led to a frequency allocation for mobile communications by the motor carrier industry and, later, the creation of the Motor Carrier Radio Service.

Commission summarized:

"It was also pointed out that, whenever possible, truck operations are conducted at night in order to avoid day-time traffic congestion and that accidents or road failures which occur on the highways at night far from any means of communication have long been a major problem of truck operators in conducting their own operations and also in aiding other users of the highways. Radio would make this night travel safer and would also aid in the following ways, among others (Tr. 4342):

- "(1) Reducing the 40,000 annual highway death toll.
- "(2) Enabling drivers to call immediately for ambulances and doctors in case of accidents.
- "(3) Aiding all highway users suffering accidents or breakdowns by calling for repairs, etc.
- "(4) Cooperating with state police.
- "(5) Re-routing of trucks to avoid dangerous road conditions (storms, floods, wash-outs, etc.).
- "(6) Improving efficiency of operations through improved dispatching, permitting reassignment of trucks while in transit and prevention of economic waste."

The private line communication network which ATA proposes to operate either itself or through Highway Radio, Inc. would, naturally, contribute to the safety of motor carrier operations in the above and other respects. For example, one of the greatest needs of the motor carrier industry is for rapid dissemination of weather and road conditions, particularly during the winter. The network which ATA proposes to operate for the trucking industry would help in the dissemination of this information between terminals so as to facilitate the relaying thereof to drivers. The network would also assist in control of cargo hazards, e.g., oversized shipments and transportation of hazardous materials and in reducing the huge property losses presently incurred from theft, pilferage, and hi-jacking of entire truck loads. The coordination of communications for the trucking industry through ATA or Highway Radio, Inc. will therefore unquestionably tend to promote the safety of life and property in transit.

Based on the additional information above provided, we trust you will now be in position to file with the FCC an appropriate tariff revision according single customer status to ATA or Highway Radio, Inc.

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as the agency responsible for the provision of an integrated private line communications network for the motor carrier industry. Because of the extremely adverse competitive aspects of your presently limited single customer tariff provisions which have been visited upon the motor carrier industry since December 12 when you deleted your TELPAK sharing tariff provision, you are solicited to file the tariff revision requested with all possible dispatch.

Very truly yours,

AMERICAN TRUCKING ASSOCIATIONS, INC.

Peter T. Beardsley

Peter T. Beardsley

Vice President and General Counsel

PTB:gv

cc: Mr. Bernard Strassburg, Chief
Common Carrier Bureau
Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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March 17, 1972

IN REPLY REFER TO:

9310

Jeremiah Courtney, Esq.
2120 L Street N. W.
Washington, D. C. 20037

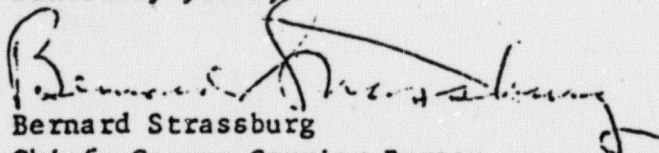
Dear Mr. Courtney:

In response to your letter of March 2, 1972, the Common Carrier Bureau will not, on its own motion, interpose any objection to AT&T putting into effect a tariff revision that would extend to the motor carrier trucking industry the same "single customer" status that is now given to the airlines in AT&T tariff 260.

It should be clearly understood, however, that in taking this position the Bureau is not necessarily expressing concurrence in the various premises advanced in your letter as support for the extension of "single customer" treatment to the motor carrier industry.

Nor is the Bureau hereby indicating its approval or disapproval of the tariff revision you propose. In the event that objections are filed to such a tariff, the Bureau will consider any such objections on their merits and will make such recommendations to the Commission as we deem warranted in the circumstances.

Sincerely yours,


Bernard Strassburg
Chief, Common Carrier Bureau

C
O
P
Y

JEREMIAH COURTNEY
ARTHUR BLOOSTON
HAROLD MORDKOWSKY
PHILIPS B. PATTON
DEAN HILL
LEWIS H. GOLDMAN

*ADMITTED IN IOWA ONLY

LAW OFFICES
JEREMIAH COURTNEY
2120 L STREET, N.W.
WASHINGTON, D. C. 20037
TELEPHONE: 202 833-3050

Exhibit E

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March 20, 1972

File No. 18

C. Duane Aldrich, General Attorney
American Telephone & Telegraph Company
195 Broadway
New York, New York 10007

Dear Mr. Aldrich:

Herewith a copy of our letter of March 2, 1972 to Bernard Strassburg, Chief, FCC Common Carrier Bureau, and of Mr. Strassburg's response dated March 17, 1972, from which you will see that the FCC Common Carrier Bureau will not, on its own motion, interpose any objection to your putting into effect a tariff revision that would extend to the motor carrier trucking industry the same "single customer" status you are now according the air lines in AT&T F.C.C. Tariff 260.

We trust the Commission's favorable reply to our letter of March 2, 1972 will permit you promptly to eliminate the inequitable rate treatment to which the motor carrier industry has been exposed since December 12, 1971, by filing the tariff revision discussed in our letter to Mr. Strassburg extending single customer status to the motor carrier (or land transportation) industry.

Very truly yours

Jeremiah Courtney

JC:dk

Enclosure

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

195 BROADWAY, NEW YORK, N. Y. 10007

212 393-4811

C. DUANE ALDRICH
GENERAL ATTORNEY

April 12, 1972

Jeremiah Courtney, Esq.
2120 L Street, N.W.
Washington, D. C. 20037Re: ATA "Single Customer" Request
Your File No. 18

Dear Mr. Courtney:

This is in reply to your letter of March 20, 1972 requesting that AT&T revise its private line tariff to provide "single customer" status to ATA or Highway Radio, Inc. In support of this request you enclosed copies of recent correspondence between yourself and the Chief, Common Carrier Bureau.

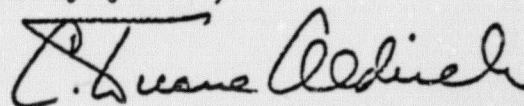
The arguments contained in your letter of March 2, addressed to Mr. Strassburg, are substantially the same as those presented to us earlier by Mr. Beardsley, Vice President and General Counsel of ATA, in his letter of December 29, 1971. As indicated in my reply of January 31 to Mr. Beardsley, it has been our view that unless and until there is a determination by the Commission that the coordination of motor carrier communications by a single agency would have the same significance for the protection of passengers and property in transit which it found in the case of the airlines, the filing of a tariff revision such as you have requested could not be justified. In our view the correspondence which you have submitted does not afford grounds for changing this conclusion.

It is significant, in our view, that the Bureau has expressly refrained from concurring in any of the arguments advanced in your letter as support for the extension of "single customer" treatment to the motor carrier industry. This disclaimer cannot be treated as a merely formal or neutral reservation of rights, since at the informal conference of February 18, to which you referred in your letter to the Bureau Chief, the Commission Staff members then present clearly indicated substantial doubts as to the persuasiveness of the

arguments concerning the need for single agency coordination of trucker communications.

In these circumstances, the Common Carrier Bureau's assurance that it will not, on its own motion, interpose any objection to a tariff filing by AT&T is an inadequate substitute for a determination by the Commission or its Staff that the coordination of motor carrier communications by a single agency would serve to enhance the safety of life and property in transit and that a tariff revision to facilitate such coordination would be in the public interest. Accordingly, we are unable to comply with your request that we initiate a tariff revision affording "single customer" status to ATA or Highway Radio, Inc. If ATA wishes to seek a Commission determination such as that outlined above we would, as previously indicated to Mr. Beardsley, cooperate in any attempts to secure a speedy Commission decision on the matter.

Cordially yours,

A handwritten signature in dark ink, appearing to read "E. Luane Aldrich". The signature is written in a cursive style with a large, stylized initial "E".

C. DUANE ALDRICH
GENERAL ATTORNEY

May 30, 1972

Lewis A. Rivlin, Esq.
Peabody, Rivlin, Gore,
Cladouhos & Lambert
1730 M Street, N.W.
Washington, D. C. 20036

Re: F.C.C. Docket No. 18128

Dear Mr. Rivlin:

At the last hearing session on May 15 you indicated that as the result of an earlier request addressed to me you "were still awaiting information from Bell which would provide hindsight with respect to the elimination of Telpak sharing" (Tr. 13540).

I assume that the request to which you were there referring is the one made on April 18 when you asked whether "preliminary reports" on the monitoring of the effects of eliminating TELPAK sharing could be made available and I stated that "we will see what we have got" (Tr. 12202, lines 1-4, 17). Just prior to that request the witness, Mr. Woods, in response to your question as to when he [Mr. Woods] would see reports of the monitoring study, had stated:

"A. I can't say with precision. I think as soon as sufficient data are available to really reasonably assess the effect of sharing elimination." (Tr. 12201, lines 23-25.)

I attempted to be responsive to your request the next day at the outset of the hearing by indicating that preliminary results of the monitoring would not be available for several months, and stating the reasons therefor (Tr. 12272-73). In the circumstances, I interpret your comment on May 15 as a modification of your earlier request, and that you would now like to have any available tracking data which could be produced before the resumption of hearings on June 13.

As indicated in the colloquies referred to above, such data are, at this date, necessarily scanty and insufficient to form the basis for any sound conclusions, even tentative conclusions, regarding the accuracy of the forecasts as to the effects of the elimination of sharing. However, some raw data are available for the months October-November 1971 and January-February 1972 and these data are presented in attachments to this letter.

Attachment A shows amounts billed by the Long Lines Department to railroads and truckers for private line services for the two months preceding and the two months succeeding the month in which the tariff change occurred. The data on Attachment B, which are derived from a message sampling system (Centralized Message Data System), show for a similar period an estimate of Outward WATS messages and revenues, and MTS revenues for highway carriers. Similar MTS and WATS data for railroads are not presently available.

These data are suggestive of shifts in usage which are consistent with the forecasts now in the record. However, no firm conclusions in this respect can be reached until further data become available and have been analyzed.

Cordially yours.

C. Duane Aldrich

Attachments

Copy to: Hearing Examiner
and to Counsel

PRIVATE LINE SERVICES
MONTHLY CONTRACT VALUES
(Long Lines Billed)*

(\$000)

<u>Month</u>	<u>Railroads</u>			<u>Total</u>	<u>Truckers</u>			<u>Total</u>
	<u>Telpak</u>	<u>P.L. Tph</u>	<u>P.L. TT</u>		<u>Telpak</u>	<u>P.L. Tph</u>	<u>P.L. TT</u>	
Oct. '71	681.2	180.1	343.6	1,204.9	1,178.3	440.8	528.0	2,147.2
Nov.	678.8	175.0	339.3	1,193.1	1,169.9	451.7	524.5	2,146.1
Jan. '72	585.0	251.4	406.4	1,242.9	-	1,891.0	869.2	2,760.2
Feb.	593.8	253.7	407.0	1,254.6	-	1,901.5	860.0	2,761.5

* Represents over 90 percent of total interstate private line.

HIGHWAY CARRIER ANALYSIS

OUTWARD WATS

<u>Month</u>	Highway Carrier Interstate Messages (000)	Percent of Total Interstate Messages	Highway Carrier Interstate Revenue (000)
Oct. '71	763.7	2.983	\$1,211.5
Nov.	Data Not Available		
Jan. '72	892.0	3.139	1,321.1
Feb.	920.3	3.072	1,369.0

MTS

<u>Month</u>	Highway Carrier Percent of Total Interstate Business Revenue	Highway Carrier Interstate Revenue (000)
Oct. '71	1.647	\$2,608.4
Nov.	1.623	2,730.2
Jan. '72	1.668	2,887.0
Feb.	1.620	2,777.2

Source: Centralized Message Data System.

VERIFICATION

William E. Elder, being first duly sworn, on oath, deposes and says:

That he is Chief of the TeleCommunications Section of the American Trucking Associations, Inc., the Complainant in the above-entitled matter; that he has read the within and foregoing complaint and knows the contents thereof; and that the matters and things therein stated are true of his own knowledge, save and except those matters therein stated on information and belief, and as to those, he believes them to be true.

William E. Elder
William E. Elder

1972.

Subscribed and sworn to before me this

7 day of June

Thomas G. O'Brien
Notary Public

My Commission expires

10-31-76

The Complainant, American Trucking Associations, Inc., 1616 P. Street, N.W., Washington, D.C. 20036, shows as follows:

1. That Complainant is the national trade association of the motor carrier industry; and as such participated in numerous proceedings involving the rights of individual motor carrier companies to operate private radio systems (mobile and point-to-point microwave) and to secure for such companies favorable tariff treatment in their use of communication facilities offered by AT&T (e.g., TELPAK Dockets 14251 and 17547). Complainant is presently participating on behalf of the motor carrier industry in the pending proceeding in Docket 18218.

2. That on June 8, 1972 Complainant filed with the Commission a Complaint in the above captioned matter, notice of which, pursuant to Section 1.729 of the Commission's rules, was given to the Defendant on June 12, 1972. The June 8, 1972 Complaint is hereby superseded by this amended Complaint.

3. That Defendant, American Telephone and Telegraph Company, 195 Broadway, New York, New York 10007, is an interstate common carrier

-2-

fully subject to the provisions of the Communications Act of 1934, as amended.

4. That the rights asserted in this complaint are the rights of the individual motor carrier companies which were leasing interstate private line communication facilities from Defendant pursuant to the Shared TELPAK provisions of AT&T Tariff F.C.C. No. 260 until the right to share TELPAK was eliminated by Defendant effective December 12, 1971. Accordingly, the term "Complainant", as used herein, denotes and includes such individual motor carriers.

5. That on October 1, 1971, Defendant filed a tariff revision abolishing TELPAK sharing, effective December 12, 1971.

6. That Defendant's tariff filing eliminating the TELPAK sharing regulation was made in response to the Commission's Decision and Order on Remand released September 13, 1971 ordering Defendant (and the Western Union Telegraph Company) within thirty days from release of that Order to file tariff revisions, effective on sixty days' notice, eliminating the unlawful discrimination the Commission found to exist in the TELPAK sharing provisions, in its decision in Docket 17547. The TELPAK sharing provisions which were found to be unlawfully discriminatory accorded sharing rights to the government, the right of way companies and the companies whose rates and charges were regulated by a governmental authority, e.g., the railroads, buses, trucks and airlines.

7. That Defendant in purporting to eliminate the discrimination found to exist in the aforesaid TELPAK sharing provisions by abolishing

-3-

TELPAC sharing magnified the unlawful discrimination found to exist, insofar as the motor carrier industry is concerned, by continuing in effect paragraph 2.2.1(G) of AT&T Tariff No. 260, but refusing to include ATA in a position parallel to ARINC in that same tariff provision, or adopting a similar provision running to the benefit of ATA. Paragraph 2.2.1(G) grants the airlines the right to share TELPAK as a "single customer" by allowing the airlines to group their private line requirements by ordering their circuits through the agency of Aeronautical Radio, Inc. ("ARINC").

8. That, specifically, paragraph 2.2.1(G) of AT&T Tariff F.C.C. No. 260 provides as follows:

"A private line service may be used for one or more of the purposes specified in (A) through (G) following.

* * *

"(G) for the transmission of communications to, from, within and between air carriers, where the customer is an aeronautical communications company licensed under the Aviation Services rules of the Commission to operate stations in the aeronautical mobile and fixed services."

9. That the motor carrier industry competes with the airlines for the transportation of freight and that this competition is growing in intensity as the freight carriage capacity of aircraft continues to increase.

10. That the inability of the motor carrier industry to group their private line requirements in a manner similar to that permitted the airlines under the aforesaid single customer tariff regulation, because of the refusal of AT&T to extend the single customer treatment to the motor carrier industry (as more fully alleged below) constitutes an unlawful discrimination and preference in favor of the air segment of the transportation

industry and has damaged the motor carrier industry.

11. That the discriminatory single customer provision of paragraph 2.2.1(G) of AT&T Tariff F.C.C. No. 260 was included in the tariff by Transmittal No. 10537 dated July 31, 1969, effective September 1, 1969, as a result of negotiations between ARINC as representative of the airlines and Defendant conducted during the pendency of the Shared TELPAK proceeding. See Exhibit A, a copy of a letter dated June 26, 1969 from ARINC to Defendant.

12. That the undertaking by Defendant during the pendency of the Shared TELPAK proceeding of negotiations with ARINC on behalf of the airlines, while ARINC and the airlines were parties to the Commission's proceeding in Docket 17547, constituted a deliberate act on the part of Defendant of according an unlawful preference for the air segment of the transportation industry and establishing an unlawful discrimination against the land segment of that industry.

13. That after Defendant filed its tariff revision to become effective December 12, 1971 eliminating TELPAK sharing, Defendant refused and continues to refuse to extend the single customer tariff regulation to the motor carrier industry, thus magnifying and aggravating the unlawful preference for the airlines and discrimination against the motor carriers.

14. That on October 26, 1971, Complainant filed with the Commission a letter asserting that, in view of the prospective elimination of TELPAK sharing provisions, fairness required that the benefits of single customer treatment be extended to the motor carrier industry. This letter was treated by the Commission as an informal complaint and transmitted to Defendant for comment on November 12, 1971. By letter dated December 3, 1971, attached hereto as Exhibit B, Defendant refused to satisfy the informal

complaint, contending that the considerations which justified the single customer provision for the airlines were not applicable to the motor carrier industry. The Commission notified Complainant of the refusal by letter of December 10, 1971. (Exhibit B1).

15. That by letter of December 29, 1971, attached hereto as Exhibit C, Complainant again requested Defendant to extend the single customer treatment to the motor carrier industry, supplying a detailed justification for according this treatment to the motor carrier industry based on (1) the adverse competitive impact of ARINC's single customer treatment on the motor carrier industry; (2) the fact that ATA has assumed responsibility for providing an integrated communications network for motor carriers analogous to the role and responsibility of ARINC; and (3) the fact that the national private line communication network serving the motor carrier industry would enhance both the safety and efficiency of motor carrier operations in much the same way the network operated by ARINC has been recognized by AT&T to contribute to the safety and efficiency of air carrier operations.

16. That subsequent to the sending of the above-mentioned letter by Complainant to Defendant, meetings were held between representatives of Complainant, Defendant and the Commission's staff relative to Complainant's request for single customer treatment. As a result of these meetings, a letter similar to the one contained in Exhibit C was sent on March 2, 1972 by Complainant's counsel to the Chief of the Common Carrier Bureau of the Commission. In response thereto, the Chief of the Common Carrier Bureau, by letter dated March 17, 1972, copy attached as Exhibit D, advised Com-

plainant's counsel on March 17, 1972 that the Bureau would not, on its own motion, interpose any objection to AT&T putting into effect a tariff revision extending to the motor carrier industry the same single customer status that is now given to the airlines.

17. That by letter dated March 20, 1972, copy attached as Exhibit E, Complainant's counsel transmitted a copy of the letter from the Chief of the Common Carrier Bureau to the Defendant expressing an expectation that the favorable reply of the Chief of the Common Carrier Bureau would permit Defendant promptly to extend single customer status to the motor carrier industry.

18. That by letter dated April 12, 1972, copy attached as Exhibit F, Defendant again declined to accord single customer treatment to the motor carrier industry.

19. That Defendant's refusal to accord single customer status to the motor carrier industry following the Common Carrier Bureau's advice that it would not oppose an extension of this treatment to the motor carrier industry constitutes not only an unjustified and unlawful discrimination against the land transportation industries but also a willful violation by Defendant of its obligations as a common carrier of not making or giving any undue or unreasonable preference or advantage to any particular class of persons.

20. That the single customer provision of paragraph 2.2.1(G) of AT&T F.C.C. Tariff No. 260, unless extended to the motor carrier industry, constitutes a violation of Sections 201(b) and 202(a) of the Communications Act of 1934, as amended.

21. That by letter dated August 29, 1972, copy attached as Exhibit G, Complainant again requested the benefits of being treated as a single customer and explained to AT&T in more detail the parallel position

-7-

of ARINC and ATA with respect to industry responsibilities and needs and that ATA, to carry out its responsibilities most efficiently, should be in a position to order and administer for the trucking industry a nationwide network of private line services to handle all categories of intra- and inter-carrier traffic relating to the inter-city highway carrier business.

22. That in according single customer treatment to the airline industry but not the motor carrier industry; Defendant, in view of the facts recited above, is knowingly violating Section 202(a) of the Communications Act by according an undue and unreasonable preference and advantage to the airlines; and that this knowing violation of Section 202(a) subjects Defendant to the penalties provided for in Section 202(c) of the Communications Act.

Request for Relief

23. That for the reasons set forth above, Complainant asks the Commission to take the following actions:

(a) That the Commission direct AT&T to satisfy this complaint by revising forthwith paragraph 2.2.1(G) of its Tariff F.C.C. No. 260 or by other means accord the motor carrier industry the same single customer treatment as is now available to the airline industry; and that this could be accomplished by revising paragraph 2.2.1(G) to read as follows:

"For the transmission of communications to, from, within and between air carriers, railroads, or truck and bus companies which are government regulated carriers of passengers or property, where the customer is an entity, not operated for profit, which furnishes communications services to such carriers in the same line of business; provided, there shall be no more than one such customer for each category of such carriers."

(b) That Defendant be ordered to forfeit to the United States

the sum prescribed in Section 202(c) for each and every day following November 15, 1972, during which the benefits of single customer treatment are not made available to the motor carrier industry.

Respectfully submitted,

AMERICAN TRUCKING ASSOCIATIONS, INC.

Dated: September 1, 1972



June 26, 1969

American Telephone & Telegraph Co.
195 Broadway
New York, New York 10017

Attention Mr. William M. Ellinghaus

Gentlemen:

As you know, ARINC's efforts to obtain a network of private line channels have been the subject of several conferences and correspondence during the past two years. In the course of this exchange of views, a difference of opinion has existed as to ARINC's customer status under AT&T tariff regulations with respect to certain categories of traffic, such as intra and inter air carrier communications. Nevertheless, these discussions, we believe, have resulted in a mutual understanding of problems underlying tariff regulations on the use of private line services, and the uniqueness of the ARINC relationship to the operating air carriers which make use of the nationwide inter-city aeronautical private line network. We would now like to pursue this matter in terms of an appropriate tariff revision dealing specifically with the questions which have arisen.

ARINC from the inception of its operations has been a private communications company, operated not for profit, to provide facilities for communications for the conduct of air carrier and other aircraft operations. The nature of ARINC's operations and the community of interest represented are rather clearly established and generally well known. During the first decade of operations, ARINC's high frequency radio system provided all communications services utilized in air transport operations, air-ground-air and point-to-point, the bulk of which was reservations traffic. ARINC's basic purpose has remained the same throughout the forty year period of its operations. The validity of this purpose and recognition

June 26, 1969

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of the public interests served are well documented. See ARINC v. AT&T, 4 FCC 155 (1937). It is agreed that the use of ARINC's private line service for aeronautical traffic dealing directly with the safe, expeditious and economical operation of aircraft and the protection of life and property in the air is proper under Tariff F. C. C. No. 260, Regulation 2.2.1(A). But in the case of the air transport industry, virtually all communications are related in some degree to the safety of flight operations. Indeed the Commission has found "that a rapid, efficient, dependable, coordinated system of communications is necessary at all times for the safety of operations of airplanes on the airways." 4 F. C. C. 155, 163. Thus, in order to carry out its responsibilities most efficiently ARINC believes that it should be in a position to order and administer for the air carrier industry a nationwide aeronautical network provided by means of a private line service, capable of handling all categories of intra and inter company traffic relating to the conduct of the air carrier business. To meet these important and unique needs, it is requested that consideration be given to the filing of an appropriate revision to Tariff F. C. C. No. 260, Paragraph 2.2.1, to permit the intended usage of the proposed ARINC nationwide inter-city private line network.

In anticipation of such an order, ARINC has determined the configuration of a nationwide network and the transmission carrier spectrum required between service points to serve the needs of all air carriers and other aviation concerns which are participants in existing ARINC Telpak administered and private line channels. In furtherance of this program, ARINC has received specific written requests for service from the ARINC private line inter-city network from all of the domestic trunk air carriers and international air carriers of the United States with one exception, and from all of the domestic local service air carriers of the United States with one exception, and with respect to each exception, we understand that those air carriers approve the request by ARINC for the removal of any tariff obstacle to the availability to ARINC of such an inter-city private line network. We are confident that all categories of aviation users support and endorse this ARINC program and we are aware of no opposition to it within the aviation community served by ARINC.

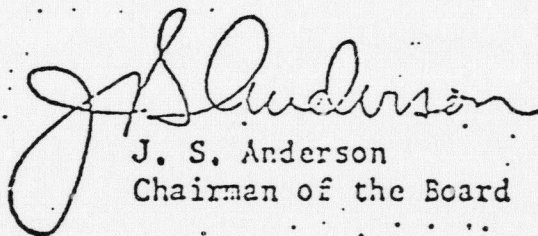
Page 5
June 26, 1969

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ARINC believes that its capability to provide a private line inter-city network to the aviation community will enhance the efficiency of air carrier operations, a goal which it has pursued throughout its forty year history of providing communications to the air transport industry.

Sincerely,

AERONAUTICAL RADIO, INC.



J. S. Anderson
Chairman of the Board

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

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Exhibit B

195 BROADWAY, NEW YORK, N.Y. 10007

212 393-3342

W. SCANDLYN
ASSISTANT VICE PRESIDENT

December 3, 1971

Mr. Kelley E. Griffith, Chief
Domestic Rates Division
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Griffith:

This is in response to your letter of November 12, 1971 (Reference 9310) transmitting a copy of the informal complaint of the President of American Trucking Associations, Inc. (ATA) dated October 26, 1971 and requesting that we satisfy the complaint or advise the Commission of our refusal or inability to do so.

ATA's complaint relates specifically to Sec. 2.2.1(G) of AT&T's Tariff F.C.C. No. 260 which, in substance, permits Aeronautical Radio, Inc. (ARINC), as a customer, to order private line services for the transmission of communications of the air carriers which it serves. ATA does not complain that this tariff regulation is unjust or unreasonable, but states that in view of the prospective elimination of TELPAK sharing provisions, fairness requires that the benefits of "single customer" treatment embodied in that regulation must be extended to the motor carrier industry. This complaint is similar in substance to that made by counsel for National Retail Merchants Association which was transmitted with your letter of August 24, 1971 (Reference 9310). A copy of our reply to the latter complaint, dated September 7, 1971, is attached hereto.

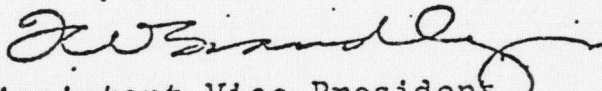
As we noted in our letter of September 7; the tariff provision in question was filed by AT&T at the request of ARINC and on the basis of its representations that, in order to carry out its responsibilities most efficiently, ARINC should be in a position to order and administer for the airline industry a nationwide network of private line services to handle all categories of intra- and inter-carrier traffic relating to the air carrier business. AT&T's conclusion that ARINC's request was a reasonable one was reached in the light of these representations and in

substantial reliance on the fact that the Commission in an earlier decision (Aeronautical Radio v. American Telephone and Telegraph Co., 4 F.C.C. 155) had stated that "... safety of life and property in the air is the principal purpose for which [ARINC] was organized and is operating under its existing declaration of policy ... Coordination [of radio and wire facilities] through a single agency will tend to promote the safety of life and property in the air." (4 F.C.C. 155, 162-63.) Thus, the reasonableness of the tariff provision in question rests upon a judgment that ARINC has unique operational characteristics and responsibilities which can be met most efficiently by permitting it, as a customer, to order and administer the communications requirements of the carriers which it serves. The provisions of Sec. 2.2.1(G) were not filed for the purpose of conferring any special rate advantage on the airline industry. ATA's assertion that failure to accord similar treatment to the trucking industry will place that industry at a significant competitive disadvantage raises issues of fact as to which we lack sufficient information to comment. ATA does not assert that it has a special role and responsibilities in the provision of an integrated communications network for truckers which are analogous to the role and responsibilities imposed upon ARINC, nor does it appear that the coordination of communications for the truckers through a single agency will tend to promote the safety of life and property in transit. In the absence of such a showing, or of a finding by the FCC to this effect, there would appear to be no basis for AT&T to amend its tariff so as to extend the "single customer" provision to the trucking industry.

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Accordingly, it is our position that Sec. 2.2.1(G) of Tariff F.C.C. No. 260 is reasonable for the reasons set out in A.T. & T. Transmittal No. 10537 dated July 31, 1969 and that we are unable to satisfy the complaint of ATA.

Very truly yours,


Assistant Vice President

Attachment

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

Exhibit B1

December 10, 1971

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IN REPLY REFER TO:

9310

Mr. William A. Bresnahan
President
American Trucking Associations, Inc.
1616 P Street, N. W.
Washington, D. C. 20036

Dear Mr. Bresnahan:

This is in reference to our previous correspondence concerning your complaint that motor carriers should be allowed the same benefits of "single customer" status and thus, sharing, as that allowed to the airlines by the telephone company in its Private Line Tariff, F.C.C. No. 260. We have received a reply from the telephone company in response to the inquiry which was made on your behalf. A copy of the company's letter of December 3, 1971, is enclosed for your information. We are also enclosing a copy of the letter to us on this matter from Aeronautical Radio, Inc. dated December 2, 1971.

It is noted the telephone company states that it is its position that the applicable tariff provisions in this matter are reasonable and that it is unable to satisfy your complaint.

As we are required to do under Part 1 of our Rules, you are advised that, if you wish to pursue this matter further, you are entitled to file a formal complaint with this Commission. Such formal complaints must be filed in accordance with Sections 1.721 through 1.735 of the Commission's Rules, copies of which are enclosed.

Sincerely yours,

Kelley E. Griffith
Kelley E. Griffith
Chief, Domestic Rates Division
for Chief, Common Carrier Bureau

Enclosures

AMERICAN
TRUCKING
ASSOCIATIONS, INC.

1616 P Street, N.W., Washington, D. C. 20036.

Exhibit C
LAW DIVISION
Peter T. Beardsley
Vice President and
General Counsel
(202) 269-3341

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December 29, 1971.

File: 515-1

Mr. Duane Aldrich
American Telephone & Telegraph Company
195 Broadway
New York, New York 10007

Dear Mr. Aldrich:

On December 3, 1971, Mr. T. W. Scandlyn, Assistant Vice President, AT&T, responded to the Federal Communications Commission's letter of November 12, 1971, which transmitted to your Company a copy of the informal complaint of the American Trucking Associations, Inc., dated October 26, 1971, relative to the single customer provisions of AT&T's Tariff No. 260 (Sec. 2.2.1(G)) which permits Aeronautical Radio, Inc. (ARINC), as a customer, to order private line services for the transmission of communications of the air carriers which it serves, without extending the benefits of such single customer treatment to the motor carrier industry.

Mr. Scandlyn's letter took the position that your Company was presently unable to satisfy the ATA complaint because (1) it had insufficient information with respect to the adverse competitive impact of its single customer treatment of ARINC; (2) ATA had not asserted that it possessed a role and responsibilities analogous to those of ARINC; and (3) it had not been shown that the coordination of communications for motor carriers through a single agency could promote the safety of life and property in transit:

"The provisions of Sec. 2.2.1(G) were not filed for the purpose of conferring any special rate advantage on the airline industry. ATA's assertion that failure to accord similar treatment to the trucking industry will place that industry at a significant competitive disadvantage raises issues of fact as to which we lack sufficient information to comment. ATA does not assert that it has a special role and responsibilities in the provision of an integrated communications network for truckers which are analogous to the role and responsibilities imposed upon ARINC, nor does it appear that the coordination of communications for the truckers through a single agency will tend to promote the safety of life and property in transit. In the absence of such a showing, or of a finding by the FCC to this effect, there would appear to be no basis for AT&T to amend its tariff so as to extend the 'single customer' provision to the trucking industry."

Dealing first with the adverse competitive impact of ARINC's single customer treatment entitling it to order private line circuits for the air carrier industry at reduced TELPAK C and D bulk rates, the freight service offered by United States Airlines is becoming increasingly competitive with motor carrier service, particularly in long-haul operations, and, even in short hauls, on commodities of high value. This is brought about by the fact that direct operating costs (flying costs, maintenance and depreciation expenses) per ton-mile are now approaching the levels of motor carrier direct operating costs.

These aircraft operating costs have been substantially reduced from the days of the piston plane (17-25 cents per revenue ton-mile) to 8-9 cents per revenue ton-mile for the newer DC-8-F, and promise to fall even further as cargo service with the wide-bodied B747 and DC10 expands. These costs are certainly competitive with motor carrier direct operating costs of 5-5-1/2 cents per ton-mile. In fact, there are indications that on all cargo B747s, direct cost per ton-mile will be 5-1/2-7-1/2 cents with a cargo capacity of 200,000 pounds. Even greater economies are being experienced in the use of the B747's belly in passenger flights to carry as much as 72,750 pounds of cargo -- less than 500 pounds under the maximum Federal grossweight allowable for motor trucks on interstate highways. In fact, such a load is nearly 70 percent of the entire capacity of an all-cargo DC-8-F.

Air cargo traffic has grown at an annual rate of 7.5 percent since 1966, nearly five times the rate of motor carrier growth. Further, the Boeing Company foresees an annual growth rate of nearly 18 percent in the world air cargo market to 1980. If the domestic market increases at only half this rate, 9 percent, it will nearly double to 5.567 million ton-miles by 1980.

The conclusion is thus inescapable that, even barring any other internal airline cost reductions, to say nothing of additional direct or indirect governmental aid, the domestic air freight industry is aiming toward capacity for a substantial portion of the domestic freight transportation market, particularly with respect to those types of freight for which short delivery time is of high importance. This is the type of freight that makes up an appreciable portion of motor carrier traffic at the present time and for which air freight promises to increase its already formidable competition to the motor freight industry. As an indication of the present capability of air carriers to offer intense competition to motor carriers, I would call your attention to an article in Traffic World of December 27, 1971, p. 48, dealing with a tariff filed with the CAB by American Airlines "designed to maximize the diversion of freight from surface to air carrier." As justification for its proposal, the airline states, among other things, that it "would

be able to compete for 69 percent of all shipments moved by highway common carriers, which in 1970 weighed less than 500 pounds, or 207 million shipments." Latest available statistics indicate that shipments weighing less than 500 pounds constitute about 71 percent of all shipments handled by ICC-regulated motor common carriers of general freight.

Turning next to ATA's role and responsibilities in providing an integrated communications network for motor carriers analogous to the role and responsibilities of ARINC, a firm decision has been made by ATA to assume this role and responsibilities for the motor carrier industry, either directly or through the industry's communications corporation, Highway Radio, Inc.^y in administering for the trucking industry a nation-wide network of private line services designed to handle all categories of intra- and interstate communications traffic affecting the conduct of the motor carrier business.

Turning, finally, to the safety of life and property aspects of ATA's coordination of communications for the motor carrier industry, the national private line network contemplated will enhance both the safety and efficiency of motor carrier operations in much the same way in which the network operated by ARINC has been recognized by AT&T to contribute to the safety and efficiency of air carrier operations.

As long ago as 1945, the Federal Communications Commission in its report dated January 15, 1945, in Docket No. 6651, In The Matter Of Allocation Of Frequencies To The Various Classes Of Non-Governmental Services In The Radio Spectrum From 10 Kilocycles To 30,000 Kilocycles, recognized the importance of radio communications in enhancing the safety of motor carrier operations. Thus, at page 174 of the Report, the

^y Highway Radio, Inc. is a corporation organized in May of 1945 under the laws of the District of Columbia. Its corporate powers include the sending and receiving of signals, messages and communications and the coordination of "the activities of the motor carrier industry in the use of communications systems to the end that a unified system of communication will be available to operators of motor vehicles on the highways of the United States." The corporate powers of Highway Radio, Inc., accordingly, include the operation of the private line communication system contemplated. Highway Radio, Inc. has from time to time held authorizations issued by the FCC in its private user mobile radio services and was first authorized to operate a mobile experimental radio system in the Chicago, Illinois area which led to a frequency allocation for mobile communications by the motor carrier industry and, later, the creation of the Motor Carrier Radio Service.

Commission summarized:

"It was also pointed out that, whenever possible, truck operations are conducted at night in order to avoid day-time traffic congestion and that accidents or road failures which occur on the highways at night far from any means of communication have long been a major problem of truck operators in conducting their own operations and also in aiding other users of the highways. Radio would make this night travel safer and would also aid in the following ways, among others (Tr. 4342):

- "(1) Reducing the 40,000 annual highway death toll.
- "(2) Enabling drivers to call immediately for ambulances and doctors in case of accidents.
- "(3) Aiding all highway users suffering accidents or breakdowns by calling for repairs, etc.
- "(4) Cooperating with state police.
- "(5) Re-routing of trucks to avoid dangerous road conditions (storms, floods, wash-outs, etc.).
- "(6) Improving efficiency of operations through improved dispatching, permitting reassignment of trucks while in transit and prevention of economic waste."

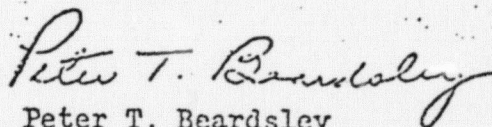
The private line communication network which ATA proposes to operate either itself or through Highway Radio, Inc. would, naturally, contribute to the safety of motor carrier operations in the above and other respects. For example, one of the greatest needs of the motor carrier industry is for rapid dissemination of weather and road conditions, particularly during the winter. The network which ATA proposes to operate for the trucking industry would help in the dissemination of this information between terminals so as to facilitate the relaying thereof to drivers. The network would also assist in control of cargo hazards, e.g., oversized shipments and transportation of hazardous materials and in reducing the huge property losses presently incurred from theft, pilferage, and hi-jacking of entire truck loads. The coordination of communications for the trucking industry through ATA or Highway Radio, Inc. will therefore unquestionably tend to promote the safety of life and property in transit.

Based on the additional information above provided, we trust you will now be in position to file with the FCC an appropriate tariff revision according single customer status to ATA or Highway Radio, Inc.

as the agency responsible for the provision of an integrated private line communications network for the motor carrier industry. Because of the extremely adverse competitive aspects of your presently limited single customer tariff provisions which have been visited upon the motor carrier industry since December 12 when you deleted your TELPAK sharing tariff provision, you are solicited to file the tariff revision requested with all possible dispatch.

Very truly yours,

AMERICAN TRUCKING ASSOCIATIONS, INC.



Peter T. Beardsley

Vice President and General Counsel

PTB:gv

cc: Mr. Bernard Strassburg, Chief
Common Carrier Bureau
Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

Exhibit D

March 17, 1972

225

IN REPLY REFER TO:

9310

Jeremiah Courtney, Esq.
2120 L Street, N. W.
Washington, D. C. 20037

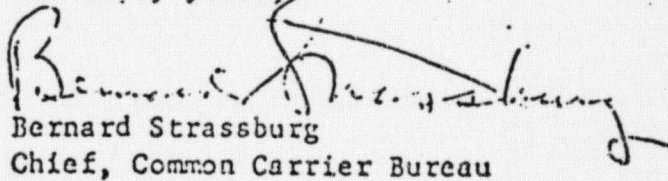
Dear Mr. Courtney:

In response to your letter of March 2, 1972, the Common Carrier Bureau will not, on its own motion, interpose any objection to AT&T putting into effect a tariff revision that would extend to the motor carrier trucking industry the same "single customer" status that is now given to the airlines in AT&T tariff 260.

It should be clearly understood, however, that in taking this position the Bureau is not necessarily expressing concurrence in the various premises advanced in your letter as support for the extension of "single customer" treatment to the motor carrier industry.

Nor is the Bureau hereby indicating its approval or disapproval of the tariff revision you propose. In the event that objections are filed to such a tariff, the Bureau will consider any such objections on their merits and will make such recommendations to the Commission as we deem warranted in the circumstances.

Sincerely yours,


Bernard Strassburg
Chief, Common Carrier Bureau

C
O
P
Y

LAW OFFICES
JEREMIAH COURTNEY
2120 L STREET, N. W.
WASHINGTON, D. C. 20037
TELEPHONE: 202 833-3050

JEREMIAH COURTNEY
ARTHUR BLOOSTON
HAROLD MOROKOFFSKY
PHILIPS B. PATTON
DEAN HILL
LEWIS H. GOLDMAN

*ADMITTED IN IOWA ONLY

March 20, 1972

File No. 18

C. Duane Aldrich, General Attorney
American Telephone & Telegraph Company
195 Broadway
New York, New York 10007

Dear Mr. Aldrich:

Herewith a copy of our letter of March 2, 1972 to Bernard Strassburg, Chief, FCC Common Carrier Bureau, and of Mr. Strassburg's response dated March 17, 1972, from which you will see that the FCC Common Carrier Bureau will not, on its own motion, interpose any objection to your putting into effect a tariff revision that would extend to the motor carrier trucking industry the same "single customer" status you are now according the air lines in APTT F.C.C. Tariff 260.

We trust the Commission's favorable reply to our letter of March 2, 1972 will permit you promptly to eliminate the inequitable rate treatment to which the motor carrier industry has been exposed since December 12, 1971, by filing the tariff revision discussed in our letter to Mr. Strassburg extending single customer status to the motor carrier (or land transportation) industry.

Very truly yours

Jeremiah Courtney

JC:dk

Enclosure

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

227

195 BROADWAY, NEW YORK, N.Y. 10007

212 393-4811

Exhibit F

C. DUANE ALDRICH
GENERAL ATTORNEY

April 12, 1972

Jeremiah Courtney, Esq.
2120 L Street, N.W.
Washington, D. C. 20037

Re: ATA "Single Customer" Request
Your File No. 18

Dear Mr. Courtney:

This is in reply to your letter of March 20, 1972 requesting that AT&T revise its private line tariff to provide "single customer" status to ATA or Highway Radio, Inc. In support of this request you enclosed copies of recent correspondence between yourself and the Chief, Common Carrier Bureau.

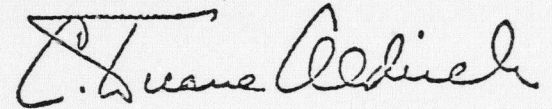
The arguments contained in your letter of March 2, addressed to Mr. Strassburg, are substantially the same as those presented to us earlier by Mr. Beardsley, Vice President and General Counsel of ATA, in his letter of December 29, 1971. As indicated in my reply of January 31 to Mr. Beardsley, it has been our view that unless and until there is a determination by the Commission that the coordination of motor carrier communications by a single agency would have the same significance for the protection of passengers and property in transit which it found in the case of the airlines, the filing of a tariff revision such as you have requested could not be justified. In our view the correspondence which you have submitted does not afford grounds for changing this conclusion.

It is significant, in our view, that the Bureau has expressly refrained from concurring in any of the arguments advanced in your letter as support for the extension of "single customer" treatment to the motor carrier industry. This disclaimer cannot be treated as a merely formal or neutral reservation of rights, since at the informal conference of February 18, to which you referred in your letter to the Bureau Chief, the Commission Staff members then present clearly indicated substantial doubts as to the persuasiveness of the

arguments concerning the need for single agency coordination of trucker communications.

In these circumstances, the Common Carrier Bureau's assurance that it will not, on its own motion, interpose any objection to a tariff filing by AT&T is an inadequate substitute for a determination by the Commission or its Staff that the coordination of motor carrier communications by a single agency would serve to enhance the safety of life and property in transit and that a tariff revision to facilitate such coordination would be in the public interest. Accordingly, we are unable to comply with your request that we initiate a tariff revision affording "single customer" status to ATA or Highway Radio, Inc. If ATA wishes to seek a Commission determination such as that outlined above we would, as previously indicated to Mr. Beardsley, cooperate in any attempts to secure a speedy Commission decision on the matter.

Cordially yours,



C. DUANE ALDRICH
GENERAL ATTORNEY

May 30, 1972

229

Lewis A. Rivlin, Esq.
Peabody, Rivlin, Gore,
Cladouhos & Lambert
1730 M Street, N.W.
Washington, D. C. 20036

Re: F.C.C. Docket No. 18128

Dear Mr. Rivlin:

At the last hearing session on May 15 you indicated that as the result of an earlier request addressed to me you "were still awaiting information from Bell which would provide hindsight with respect to the elimination of Telpak sharing" (Tr. 13540).

I assume that the request to which you were there referring is the one made on April 18 when you asked whether "preliminary reports" on the monitoring of the effects of eliminating TELPAK sharing could be made available and I stated that "we will see what we have got" (Tr. 12202, lines 1-4, 17). Just prior to that request the witness, Mr. Woods, in response to your question as to when he [Mr. Woods] would see reports of the monitoring study, had stated:

"A. I can't say with precision. I think as soon as sufficient data are available to really reasonably assess the effect of sharing elimination." (Tr. 12201, lines 23-25.)

I attempted to be responsive to your request the next day at the outset of the hearing by indicating that preliminary results of the monitoring would not be available for several months, and stating the reasons therefor (Tr. 12272-73). In the circumstances, I interpret your comment on May 15 as a modification of your earlier request, and that you would now like to have any available tracking data which could be produced before the resumption of hearings on June 13.

As indicated in the colloquies referred to above, such data are, at this date, necessarily scanty and insufficient to form the basis for any sound conclusions, even tentative conclusions, regarding the accuracy of the forecasts as to the effects of the elimination of sharing. However, some raw data are available for the months October-November 1971 and January-February 1972 and these data are presented in attachments to this letter.

Attachment A shows amounts billed by the Long Lines Department to railroads and truckers for private line services for the two months preceding and the two months succeeding the month in which the tariff change occurred. The data on Attachment B, which are derived from a message sampling system (Centralized Message Data System), show for a similar period an estimate of Outward WATS messages and revenues, and MTS revenues for highway carriers. Similar MTS and WATS data for railroads are not presently available.

These data are suggestive of shifts in usage which are consistent with the forecasts now in the record. However, no firm conclusions in this respect can be reached until further data become available and have been analyzed.

Cordially yours.

C. Duane Aldrich

Attachments

Copy to: Hearing Examiner
and to Counsel

PRIVATE LINE SERVICES
MONTHLY CONTRACT VALUES
(Long Lines Billed)*

(\$000)

<u>Month</u>	<u>Railroads</u>				<u>Truckers</u>			
	<u>Telpak</u>	<u>P.L. Tph</u>	<u>P.L. TT</u>	<u>Total</u>	<u>Telpak</u>	<u>P.L. Tph</u>	<u>P.L. TT</u>	<u>Total</u>
Oct. '71	681.2	180.1	343.6	1,204.9	1,178.3	440.8	528.0	2,147.2
Nov.	678.8	175.0	339.3	1,193.1	1,169.9	451.7	524.5	2,146.1
Jan. '72	585.0	251.4	406.4	1,242.9	-	1,891.0	869.2	2,760.2
Feb.	593.8	253.7	407.0	1,254.6	-	1,901.5	860.0	2,761.5

* Represents over 90 percent of total interstate private line.

HIGHWAY CARRIER ANALYSIS

OUTWARD WATS

<u>Month</u>	Highway Carrier Interstate Messages (000)	Percent of Total Interstate Messages	Highway Carrier Interstate Revenue (000)
Oct. '71	763.7	2.983	\$1,211.5
Nov.		Data Not Available	
Jan. '72	892.0	3.139	1,321.1
Feb.	920.3	3.072	1,369.0

MTS

<u>Month</u>	Highway Carrier Percent of Total Interstate Business Revenue	Highway Carrier Interstate Revenue (000)
Oct. '71	1.647	\$2,608.4
Nov.	1.623	2,730.2
Jan. '72	1.668	2,887.0
Feb.	1.620	2,777.2

Source: Centralized Message Data System.

AMERICAN
TRUCKING
ASSOCIATIONS, INC.

1616 P Street, N.W., Washington, D. C. 20036

Exhibit G

233

August 29, 1972

C. Duane Aldrich, General Attorney
American Telephone and Telegraph Company
195 Broadway
New York, New York 10007

Dear Mr. Aldrich:

In reviewing the information we have previously sent you concerning our need for the benefits of single customer treatment similar to that afforded to ARINC under Section 2.2.1(G) of your Tariff FCC No. 260 and your responses to our Complaint to the FCC on that subject, it appears that you rely on the fact that ARINC, to carry out its responsibilities most efficiently, should be in a position to order and administer for the airline industry a nationwide network of private line services to handle all categories of intra- and inter-carrier traffic relating to the air carrier business; and it further appears that we may not have explained in sufficient detail that to carry out its responsibilities most efficiently, ATA needs to be in a position to order and administer for the trucking industry a nationwide network of private line services to handle all categories of intra- and inter-carrier communications relating to the trucking business.

The purpose of this letter is to explain that fact in more detail, with respect to ATA's position.

ATA is the national association of the motor carrier industry, organized in 1933. Its service functions to the industry are numerous and include a responsibility to act with respect to industry-wide problems as a spokesman and representative of its membership consisting of the various state trucking associations and the members thereof; and to undertake, under the direction of its Executive Committee, Board of Directors and its administrative organization, the performance of industry service functions which cannot, as a practical matter, be carried out most effectively by state trucking associations or individual motor carriers.

ATA has long been responsible for industry efforts to secure a satisfactory, operationally practical and inter-industry economically-competitive communications system for its members; a special unit within the ATA structure, the Telecommunications Section, exists for that purpose. You recognize, I know, without summary here, the vast needs of the trucking industry for communications, but you apparently have not fully appreciated the inter-industry competitive communications system problem which faces motor carriers.

- 2 -

Due to the historical and chronological development of the railroad and wire line communications industries, it is proper to characterize the composite railroad industry communications system as the grandfather of the present day telephone industry and the railroads today possess as an accident of history, vast, industry operated, communications systems which have been carefully and systematically fashioned to serve the needs of member carriers in the railroad industry, and through them to serve their customers. The structure of the railroad industry consists of a very small number of relatively large operating units, each of which practically can finance and operate and now possesses privately-owned or common carrier furnished communications facilities which are centrally controlled on a carrier, regional or national basis, and which provide to the railroad industry types of communications facilities and services uniquely suited to the needs of that industry. The railroad industry communications system also has long enjoyed cost, interconnection and administrative control advantages not available to motor carriers, who have relied to an overwhelming extent upon communications common carrier general public offerings to satisfy their communications needs. You are well aware of the inter-industry competition for public carriage business which exists between railroads and motor carriers.

The airline industry also is composed of a relatively small number of large carriers. These air carriers individually and through the vehicle of ARINC have been permitted to develop an integrated communications system specifically designed and centrally operated administratively to best serve the needs of the air transportation industry. The telephone industry has recognized the needs of the air transportation industry for a proper industry communications system tailored to the varied and various needs of that industry and have extended to ARINC the right to centrally order, control and operate administratively a nationwide network of leased communications circuits to serve the industry needs on a satisfactory, operationally practical and inter-industry economically-competitive basis. You are well aware of the inter-industry competition which exists between airlines and motor carriers.

The trucking industry, unlike the railroad and airline industries, is made up of a vast number of local, regional and nationwide transportation organizations. While motor carriers, considered as an industry group, represent one of the largest industries in the United States, individual operating units of the trucking industry do not have the financial or personnel resources to build their own communications systems, as railroads did, nor to engineer and manage individual systems to be integrated into a nationwide system as airlines have done until recently, when ARINC was permitted to undertake the provision of a nationwide network as a single customer. This problem which involves the internal effectiveness and competitive ability of the inter-city trucking industry, has been a matter of concern and the subject of action by ATA for many years past; and it remains one of ATA's most pressing problems.

- 3 -

ATA organized a corporation known as Highway Radio Inc. in 1945 for the purpose of conducting experimental operations to determine the relative practicability of various highway communications means and systems and with a specific and express business object of operating a national system of communications to and from moving trucking units and between trucking terminals and organizations in connection with safety and traffic matters.

In 1954, ATA's then Radio Committee passed a resolution to urge ATA to hire as a full time responsible staff member - a competent radio and communications engineer - which was done. That same year, ATA publicly announced the formal undertaking of the planning for an Eastern Microwave System stretching from Boston to Miami and as far West as Memphis, Tennessee and Meridian, Mississippi. This system was not activated at that time by ATA, it being found that individual carrier use of leased telephone company circuits between their offices plus use of non-integrated mobile systems would provide interim improvements adequate for the moment.

In 1955, the Radio Committee was superseded by a Communications Committee appointed by and subject to continuing control of the Executive Committee of the Board of Directors of ATA, its highest policy and operational organization. This Communications Committee was charged with responsibility for developing and effectuating plans for adequate communications for and between ATA members, including appropriate use of both common carriers and private communications facilities. The Executive Committee took further action in June of 1967 to restate and re-enforce its charge of responsibility to the Communications Committee, authorizing it to undertake the creation and operation of a nationwide trucking industry private communications system using both private microwave and common carrier leased facilities for the purpose; requiring, however, that the system should be practical and inter-industry competitively realistic as to administration, operation and costs.

Since 1967, the Communications Committee has very actively studied and planned for improved communications for the trucking industry to erase the competitive imbalance as to communications system costs and effectiveness between the trucking industry and the railroad and airline industries. These efforts have resulted in ATA's Communications Committee developing a deep understanding of the potentials and limitations of various plans to accomplish the necessary results.

During the time that shared TELPAK rates were available to members, ATA's Communications Committee concentrated its efforts in the direction of assisting members to achieve communications system improvements through use of various TELPAK services, deciding not to make operational its planned nationwide private microwave system for the threshold reason that members do not have the technical personnel locally to install or operate such a private microwave system, coupled with the disadvantage of the resulting necessity of building a nationwide ATA technical and operational organization. Motor

- 4 -

carriers do not have available to them the government subsidized or government furnished local mobile, en route FAA-furnished and navigational aid radio systems available to airlines, or the historically developed local communications expertise of railroad communications departments to form a nucleus upon which to build.

While having the benefits of being treated as a single customer would have accelerated the time when it became apparent to ATA that these measures were inadequate, it was the impact of recent developments which have finally clarified this issue. It is now clear that shared TELPAK rates will no longer be available to motor carriers. Meanwhile, ARINC has been granted and continues to enjoy the benefits of treatment as a single customer user for its industry communications system. It is now clear to ATA that it must take prompt and direct responsibility for the actual establishment and operation of a nationwide communications system which will do for the trucking industry almost precisely what ARINC's system does for the airline industry. The Communications Committee has, accordingly, with the approval of the Executive Committee of the Board of Directors, made a firm organizational commitment to establish and operate such a system, subject only to the limitation imposed by its parent body, the Executive Committee, that "the system must be practical and inter-industry competitively realistic as to administration, operation and costs". This requires the benefits of treatment as a single customer user.

As a result of its long study and deep understanding of the problem, and for reasons which are fully comprehended by your company, it is apparent to ATA that the creation from scratch of a nationwide private radio system to serve motor carriers' needs is a perilous and difficult project of a magnitude which would require ATA to run a risk that the system might not achieve practicability and competitively realistic cost, administration and operational levels of efficiency for many, many years. As a result, ATA has determined that it can most effectively carry out its responsibilities by the establishment of a nationwide motor carriers' system based upon the use of circuits and equipment leased from common carriers, combined with and integrating the numerous private mobile radio systems already in existence. The creation of such a system is a present task of ATA, but it cannot be carried out most effectively unless and until ATA is granted the same single customer status which was granted to ARINC, and for the same reasons.

As you know, ATA as such will not be the user of the system, but rather the various members of ATA will be the users. Your tariffs impose various serious restrictions concerning administration, operations and costs on systems made up by interconnection of facilities leased to numerous individual users. The administrative and operational inhibitions of such a network are fully as important as the cost inhibitions. For example, though the system planning and coordination, and the specifications for various facilities needed must be developed at ATA's central engineering and control location,

- 5 -

orders to the various telephone companies to effectuate such installations must now be handled locally, with the local serving utility. Motor carriers generally simply do not have local personnel capable of handling the negotiation of such facility and interconnection orders. Nor is the chore one of rote, whereby cut-and-dried facility orders could be sent to local trucking companies merely for relay to serving communications common carriers. Facility and interconnection orders need to be negotiated constantly in such a system by knowledgeable personnel on both sides of the negotiation in view of the non-uniform availability of facilities and the varying responses of individual companies and even individual offices within the same companies to requests for facilities to be added to or subtracted from a wide area system involving facilities of the local common carrier, sister companies, connecting companies and private systems. It is essential to the reasonably efficient and effective establishment of such a system that ATA be permitted to negotiate and place orders for the various network connected facilities at one central point, which in fact in turn requires treatment of ATA as a single customer.

With respect to operation, the wide variety of telephone companies which contribute their facilities to such a vast network, often have different interpretations of tariff restrictions as to shared use, resale of service, and user-traffic tariff inhibitions. The establishment and operation of the vast type of system needed by motor carriers, which closely parallels that of ARINC, would be difficult to the point of likely impracticability if ATA were not afforded the same type of single customer status which has been granted to ARINC.

With respect to cost, it can easily be recognized that the institution of the system needed by motor carriers will entail great start up and learning costs as it becomes operational, and that at best, it may take many years before it is "competitive" to the systems of other branches of the transportation industry. If motor carriers were also required to shoulder the burden of higher basic common carrier rates than ARINC, due to your refusal to grant the same single customer status to ATA, the start up burden would be so much the greater, and the prospect of ever reaching cost efficiency parity with other transportation industry systems would be nil. Such a situation would seriously endanger, or would destroy our chances of achieving an operational network which is practical and competitively realistic.

You have stated to us and to the FCC that the single customer treatment afforded to ARINC was based upon their "representations that, in order to carry out its responsibilities most efficiently, ARINC should be in a position to order and administer for the airline industry a nationwide network of private line services to handle all categories of intra- and inter-carrier traffic...." We believe that, with the more detailed explanation of our responsibilities and problems set out above, you will recognize that ATA is

- 6 -

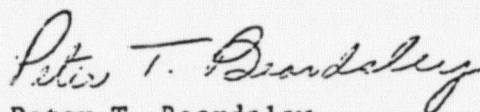
in the same position, except that ATA's problems of ordering and administering are even more severe than ARINC's, since motor carriers generally do not have as high a degree of communications sophistication within their present organizations as do airlines, and since the trucking industry is made up of hundreds of times as many operating carriers as is the airline industry.

In view of these facts, we hope that you will promptly make the policy decision necessary to extend the benefits of single customer treatment to ATA, and will thereafter promptly amend your tariffs to effectuate that decision. In a similar spirit of cooperation, we are amending our FCC Complaint to delete the prayer for money damages at this time. However, we are proceeding, commencing this date, to accept facility orders from our member companies for the provision to them by ATA of their necessary inter-city communications channels and associated equipment at rates based upon the treatment of ATA as a single customer. We expect to be placing orders with you for facilities to implement our initiation of a trucking industry system which should grow in time and in an orderly fashion to match or exceed the scope of the ARINC system.

We shall look forward to hearing from you at your earliest convenience.

Very truly yours,

AMERICAN TRUCKING ASSOCIATIONS, INC.



Peter T. Beardsley
Vice President and General Counsel

VERIFICATION

William E. Elder, being first duly sworn, on oath,
deposes and says:

That he is Chief of the TeleCommunications Section of
the American Trucking Associations, Inc., the Complainant in the
above-entitled matter; that he has read the within and foregoing
amended complaint and knows the contents thereof; and that the
matters and things therein stated are true of his own knowledge,
save and except those matters therein stated on information and
belief, and as to those, he believes them to be true.

William E. Elder
William E. Elder

Subscribed and sworn to before me this 1st day of

September 1972.

Thais G. O'Brien
Notary Public

My commission expires 10-31-77.

COMMENTS OF
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

December 11, 1974

DOCKET NO. 20097

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COMMENTS OF
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

American Telephone and Telegraph Company ("AT&T") respectfully submits these Comments in response to the Notice of Inquiry and Proposed Rule Making ("Notice"), released July 5, 1974, in this docket (47 F.C.C.2d 644).

1. The Notice states (paragraph 1) that the questions involved in this proceeding are:

". . . whether, and under what conditions, subscribers of the various service offerings of communications common carriers should be allowed to resell such services to others or to participate with others in the sharing or joint use of such services, and, if so, whether and to what extent the Commission should regulate any such resale or shared use."

In particular the Notice inquires as to whether all limitations on resale and shared use should be removed, and raises questions as to the place of the middleman in the field of communications.

2. Resale and shared use cannot be considered in isolation. This proceeding in fact raises some of the most

fundamental questions concerning the structure and level of rates charged for communications services. The nature and pricing of the interstate services offered by AT&T, the cross-elasticity of demand among these services, the equality of treatment of customers, and the ability to provide service responsive to user needs are all intimately interrelated with the extent of permissible resale and shared use and the interposition of middlemen between telephone company and consumers.

3. Unlimited resale and sharing would require repricing of TELPAK, in a way which would probably destroy its utility as a competitive response to private microwave. It may require repricing of WATS in a way which would impair its utility to customers as a desirable and innovative type of service. The result in each case would be to require basic message service to carry a heavier burden.

4. Unlimited resale and sharing would also result in further de-averaging of rates, with the result that customers on sparse traffic routes would pay substantially higher effective rates than those on heavy traffic routes, who would have more resale and sharing opportunities. The long-standing goal of maximizing availability of communications services throughout the country would be endangered.

5. The effects of unlimited resale and sharing would extend to the pricing of intrastate services, as well. The Separations effects of changes in interstate usage would

probably result in a greater allocation of cost to intra-state, and therefore put upward pressure on local rates.

6. Unlimited resale would also interpose middlemen between the telephone company and its subscribers, with the result that it would be more difficult to provide continuing good service. The Commission would presumably have greater burdens in regulating these middlemen.

7. Indeed the drastic restructuring and repricing which would be necessitated by unlimited resale and sharing would contain the seeds of destroying their economic utility for resale and sharing. TELPAK and WATS, the services most attractive to resale and sharing, would be repriced at levels which would destroy much of that attractiveness.

8. The above is not to say that AT&T is opposed to all changes in the resale and sharing provisions. It has made such changes in the past and is willing to make any further changes which are shown to be desirable and reasonable.

* * * * *

9. These Comments consist of four parts:

- a definition of terms;
- what resale and sharing provisions are now included in AT&T's interstate tariffs, and why they are just and reasonable;
- how changes in these provisions would affect

rates and service, and the aggregate net revenue effects of unlimited resale and sharing; and

- AT&T's position on possible modifications of present provisions.

10. The discussion herein is organized as set out in paragraph 9 in order to avoid the repetition which necessarily would be involved in answering individually the 12 specific inquiries set out in the Notice. There is appended to these Comments a listing of the 12 specific inquiries, together with a statement of the portions of these Comments which respond to each inquiry.

I. DEFINITION OF TERMS

11. Paragraphs 15 et seq. of the Notice discuss "resale" in terms of the communications common carrier providing service and facilities to "intermediaries," who then reoffer them to the public. Thus, the ultimate user of the service or facilities is a customer of the intermediary, not of the common carrier. An example of this in the Bell System tariffs is the provision of service to Composite Data Service Vendors, who then use the service to provide a service of their own to their own customers. In such cases, the telephone company may not even know the identity of the ultimate consumer of its service.

12. There are several variations implicit in such resale of services. Thus the intermediary may itself be a user of the service with a communications need of his own, or he may simply be a middleman who resells all the service to which he subscribes. The former may be illustrated by a subscriber with access to the MTS network, who, under certain circumstances, resells to others the ability to make interstate toll calls.* The latter would include such cases (not permitted under the tariffs) as a middleman who orders a TELPAK service and resells to others the entire capacity, but in smaller chunks.

13. Other variables are whether the intermediary resells strictly at cost or at cost plus a profit; whether it adds to or "augments" the telephone company service, or merely resells the same communications service which it bought; and whether or not the intermediary is itself another common carrier or an otherwise publicly regulated entity.

14. Paragraphs 19 et seq. of the Notice refer to "line sharing" or "joint use" as occurring when "a more or less limited number of communications users" band together to share a communications facility. The fact that they are "communications users" implies that each has a communications

* See Paras. 17-18, infra.

need of his own, and that there is no middleman. Thus, under AT&T private line tariffs, "joint use" does not involve an intermediary, since the customer for the service has a need of his own for the service and must advise the telephone company of the identity of other users. In general, the users themselves are billed for their proportionate share of use. Joint use generally will involve economies for the users in that each user pays less for the amount of service he receives than he would pay if he subscribed individually for the service he receives.

II. THE RESALE AND SHARING PROVISIONS IN
PRESENT AT&T INTERSTATE TARIFFS AND
THEIR LAWFULNESS

15. The following tariffs cover the interstate services provided by AT&T to the public.*

- Tariff F.C.C. No. 263 - Long Distance
Message Telecommunications Service (MTS)
- Tariff F.C.C. No. 259 - Wide Area Tele-
communications Service (WATS)
- Tariff F.C.C. No. 260 - Private Line Service

16. The following paragraphs will state in detail the resale and shared use provisions of the tariffs listed in paragraph 15.

* The Bell System also has a number of tariffs, the purpose of which is to offer facilities to other common carriers - the specialized common carriers, international record carriers, domestic satellite carriers, etc. - in order that they may offer their own service. These tariffs do not raise the problems discussed in these Comments.

A. Tariff F.C.C. No. 263

17. Long Distance Message Telecommunications Service (MTS) is a switched service, available generally to subscribers through the use of the local loops which are furnished in connection with exchange telephone service under intrastate tariffs, and also from coin telephones. Charges for the service are on a per message basis, and vary with the distance of the call, the time duration of the call, the time of day when it is made, and the manner in which the call is placed. Revenues are thus usage sensitive.

18. The following provision governs resale of MTS:

" 2.2.1 Use of Service

The service is provided for use by the customer and may be used by others, when so authorized by the customer, providing that such use shall not be made subject to any charge by the customer in addition to the message charges of the Telephone Company as set forth in this tariff."

B. Tariff F.C.C. No. 259

19. Wide Area Telecommunications Service (WATS) is also a switched service. A customer subscribes to an interstate WATS line, on either a Full Business Day or Measured Time basis, over which line calls may be made to or from many scattered locations within the wide geographical area to which he subscribes. The subscriber pays a fixed flat monthly charge for ten hours of use for Measured Time Service, or for 240 hours of use for Full Business Day service. Use beyond these limits is billed on a cumulative basis for the

additional hours used. Thus, the service is priced on a flat rate basis for the initial periods of use and on an essentially usage sensitive basis for use beyond those periods.

20. The WATS tariff prohibits generally any resale or shared use of a WATS line; certain limited exceptions are permitted:

" 2.2.1 Use of the Service by the Customer

The service is provided only for communications in which the customer has a direct interest and shall not be used for any purpose for which a payment or other compensation shall be received by him from any other person, firm or corporation for such use, or in the collection, transmission or delivery of any communications for others.

This provision shall not apply when WATS is used:

- (A) By a communications common carrier in the provision of public telegram message service or overseas data message service.
- (B) By a customer for purposes of providing a Message Forwarding Service for its transient clients provided that WATS is not connected directly or indirectly with other communications channels provided by the Telephone Company or others so as to establish a through connection for voice communications between two parties neither of whom is the WATS customer.
- (C) Where the customer is a composite data service vendor, for the transmission of switched data (non-voice) communications for its patrons when such communications relate directly to the business of such patrons, for communications in which the customer has direct interest, and, additionally, for composite data service or hybrid data processing service, as defined in Part 64.702 of the Federal Communications Commission's Rules and Regulations, rendered by a patron of the customer. All other forms of collection, transmission or delivery of communications for others is prohibited."

C. Tariff F.C.C. No. 260

21. Private line service, unlike a common user service, is generally furnished for the dedicated use of the subscriber between specified points. The service is offered in several Series depending on bandwidth, purpose, type of communications and other variables. Rates for private line services are generally specified separately for interexchange

channels, for channel terminations and for any station equipment and arrangements required. The rates for inter-exchange channels in some instances decline with distance. The Series 5000 service (TELPAC) is a bulk service offering consisting of two base capacity classifications: TELPAK C, which provides a maximum base capacity of 60 equivalent voice grade channels, and TELPAK D, which provides a maximum base capacity of 240 equivalent voice grade channels. The inter-exchange channel rate for each TELPAK base capacity is a flat rate per mile and does not vary with the number of channels arranged for use within the specific base capacity ordered. The charges for channel terminations and station equipment, however, are usage sensitive in the sense that they depend on the amount of service ordered.

22. The following are the pertinent provisions on resale and shared use of Private Line Services:

" 2.2 Use

- 2.2.1 A private line service may be used for one or more of the purposes specified in (A) through (J) following. When a private line service is arranged for joint use the joint user shall be permitted to use such service in the same manner as the customer as specified in (A) through (I) following.
- (A) For the transmission of communications to or from the customer and relating directly to the customer's business.
 - (B) For the transmission, to all stations simultaneously, of communications which relate directly to matters of common interest to the customer and the authorized users when those connected to the service are all in the same general line of business.
 - (C) For the transmission of communications relating directly to the business of a subsidiary corporation over which the customer exercises control through the ownership of more than 50% of the voting stock.
 - (D) For the transmission of communications to or from any station on a service furnished to a Department or Agency of the United States Government when the head of the Department or Agency, or his duly authorized representative, notifies the Telephone Company in writing that the use is intended only for official United States Government business.
 - (E) Where the customer is an organized stock or commodity exchange, for the transmission of communications to or from an exchange member located on the floor of such exchange and relating directly to the business of the member.
 - (F) Where the use of the service relates to coordination or exchange of electrical pooled power, for the transmission of communications between any two or more stations of such service or similar services furnished to others who are parties to the coordinating or exchange arrangement.

- (G) For the transmission of communications to, from, within and between air carriers, where the customer is an aeronautical communications company licensed under the Aviation Services rules of the Commission to operate stations in the aeronautical mobile and fixed services.
 - (H) For the transmission of communications to or from any station on a service furnished to the United States Postal Service for its use in the provision of its Facsimile Mail Service.
 - (I) For the transmission of communications of a state or local government agency where the service is ordered for such agency by the United States Government pursuant to the Intergovernmental Cooperation Act of 1968.
 - (J) Where the customer is a composite data service vendor, for the transmission of switched data (non-voice) communications for its patrons when such communications relate directly to the business of such patrons, for communications over the private line service in accordance with (A) preceding, and, additionally, for composite data service or hybrid data processing service, as defined in Part 64.702 of the Federal Communications Commission's Rules and Regulations, rendered by a patron of the customer. All other forms of collection, transmission or delivery of communications for others is prohibited.
- Joint use arrangements are specified in 3.1.5 following.

* * * * *

- " 2.2.3 Private line service shall not be used for any purpose for which a payment or other compensation shall be received by either the customer or any authorized or joint user, or in the collection, transmission, or delivery of any communications for others, except as provided in 2.2.1(F), 2.2.1(G), 2.2.1(H) and 2.2.1(J) preceding. This provision does not prohibit an arrangement between the customer and the authorized or joint users to share the cost of the private line service, nor does it prohibit the use of Type 2006, 3206 or 8206 channels by a communications common carrier in the rendition of a public telegram message business.

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"2.5 Definitions

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- " Customer
The term "Customer" denotes the person, firm or corporation which orders service and is responsible for the payment of charges and compliance with Telephone Company regulations. No one may be a customer for a private line service who does not have a communication requirement of his own for its use except as provided in 2.2.1(C) or 2.2.1(G) or 2.2.1(J) except that a customer for a private line service jointly used in accordance with 3.1.5(A) following may order the addition of service points to meet the communications requirements of a joint user of such service where such additional service points are required to extend the transmission of communications to or from the private line service for which the customer has a communication requirement of his own.

* * * * *

- " Joint User
The term "Joint User" denotes a person, firm or corporation who is designated by the customer as a user of a private line service furnished to the customer and to whom a portion of the charge for the service will be billed under a joint user arrangement as specified in 3.1.5 (A) and (B) following.

* * * * *

"3.1.5 Joint Use Arrangements

(A) For Series 1000, 2000, 3000 and 4000

- (1) Joint use arrangements, for use by one or more joint users on an individual channel, are offered on those private line services furnished for 24 hours per day, seven days per week between points in the United States which utilize Series 1000, Series 2000, Series 3000 or Series 4000 channels and equipment, except
 - (a) those services which utilize a Type 2006 channel, or a Type 2001 channel used alternately as a channel in connection with foreign exchange service.
 - (b) those services which are furnished in connection with a Common Control Switching Arrangement or a Switched Circuit Automatic Network.
 - (c) those services which are furnished for use in connection with composite data service.

Joint use is offered in connection with overseas private line services furnished between points in the United States and Honolulu, Hawaii which utilize Series 2000 or Series 3000 channels and equipment, except as provided in (a) and (b) above.

Joint use is not offered on Series 5000 channels except that one Type 5302 channel in each base capacity section and its associated Type 5032 channels used by the customer to create channels in accordance with 2.2.6(B) preceding may be arranged for joint use of such derived channels provided the customer has a communications requirement for his own use for one or more of the derived channels. An associated Type 5032 channel is a channel which is connected to a Type 5302 channel so as to form a private line. Joint use is not offered for those services which are furnished in connection with a common control switching arrangement or a switched circuit automatic network.

Joint use as specified in (2) through (5) following, is not offered on those services which utilize, in whole or in part, Series 6000, Series 7000, Series 8000 or Series 10000 channels or on private line services and channels furnished for miscellaneous experimental purposes under this Company's Tariff F.C.C. No. 258.

- (2) A joint user must have a station and a service terminal or station terminal on the private line and the station must be located on the premises of the joint user, except that these requirements do not apply to a joint user of a private line with respect to his use of additional channels created by the customer from the private line in accordance with 2.2.6(B) preceding provided a joint user has a station on a channel connected in accordance with 2.6.4(C) or 2.6.5(L) to the channel created by the customer.
- (3) The Telephone Company shall not be responsible for the manner in which the joint use of the service will be allocated. Orders which involve the start, rearrangement, release, or discontinuance of service will be accepted by the Telephone Company only from the customer.
- (4) Where a customer requests that a service be arranged for joint use, the charges for the service shall be determined as provided in this tariff and, in addition, the following charges will apply:
 - (a) Between points in the United States a charge of \$7.50 per month (USOC JNP) per joint user for each service arranged for joint use together with a charge of \$10.00 per month (USOC JMS) for each service terminal or station terminal used to meet the communication requirements of a joint user.
 - (b) Between points in the United States and Honolulu, Hawaii a charge of 10% (USOC JNT) of the interexchange channel charge will apply to the portion of the service between San Francisco, California and Honolulu, Hawaii instead of the charges in (a) preceding. For any extension of the service beyond San Francisco the charges in (a) will apply.

- (5) All charges for the service, including the charges for the joint use arrangement, for interexchange channels, channel terminals, service terminals, station terminals and station equipment, furnished for the joint users as part of the private line service, will be computed as though the service were to be billed to the customer. The customer and each joint user will be billed for the components of the service which are furnished exclusively to each of them for his individual use. The charges for components of the service which are not used exclusively by a customer or a joint user will be allocated for billing purposes in accordance with percentages of use specified by the customer, except that no portion of a Series 5000 base capacity charge shall be allocated to a joint user. For each service only a single percentage shall be specified for each joint user and shall remain in effect for a minimum of one month and such percentages on file on the first day of the customer's billing cycle will be used in computing that month's billing. Without affecting the customer's ultimate responsibility for payment of all charges for the service, each joint user shall be responsible for the payment of the charges billed to him in accordance with this subparagraph.

23. As the above provisions show, line sharing or joint use (not involving resale) is, in general, permitted for nonswitched private line services of voice grade or less, except those included in bulk service offerings such as Series 5000 (TELPAC) and in special circumstances such as channels furnished for miscellaneous experimental purposes. The reasons why sharing of Series 5000 is generally not permitted are discussed in paragraphs 37-39 and 49-52, below. Resale of private line service is generally prohibited by tariff provisions requiring a customer or joint user to have a communications requirement of his own for the service,* permitting a customer or joint user to use the service only for communications relating directly to his own business,** prohibiting the use of the service for the transmission, collection or delivery of communications for others;*** and by requiring billing directly to the joint user.**** (The

* AT&T Tariff F.C.C. No. 260, para. 2.5, supra.

** AT&T Tariff F.C.C. No. 260, para. 2.2.1(A), supra.

*** AT&T Tariff F.C.C. No. 260, para. 2.2.3, supra.

**** AT&T Tariff F.C.C. No. 260, para. 3.1.5(A)(5), supra.

Justification for these provisions is discussed in paragraphs 25 to 26 and in Section III, below.)

24. The Notice classifies the provisions found in AT&T Tariff F.C.C. No. 260, paragraph 2.2.1(B)-(J) as "exceptions to the prohibition on the resale of private line services" (para. 13). While not all these provisions are "exceptions," they reflect situations where special provisions are proper in order (a) to meet the realities of business,* (b) to further the policies of the United States Government,** (c) to promote the health and safety of the public*** and (d) to permit innovative service concepts.****

* AT&T Tariff F.C.C. No. 260, para. 2.2.1(B), (C), and (E), supra, allow, respectively, those customers engaged in the buying and selling of property by auction, with a need to hear and respond to each other's bids to make use of the same private line offering; a parent and a subsidiary corporation controlled by a parent through ownership of the majority of the voting stock to be treated as one customer; to permit brokerage firms to communicate with their representatives on the floor of a stock exchange.

** AT&T Tariff F.C.C. No. 260, para. 2.2.1(D), (H), (I), supra, further the governmental policies encompassed by the Bureau of the Budget Circular A76, and the Inter-governmental Cooperation Act of 1968; and the need created by the United States Postal Service for the provision of Facsimile Mail Service.

*** AT&T Tariff F.C.C. No. 260, para. 2.2.1(F) and (G), supra, were filed, respectively, to aid in preventing future power blackouts, and to promote the safety of life and property in the air (see *Aeronautical Radio, Inc. v. AT&T Co.*, 4 F.C.C. 155, 157).

**** AT&T Tariff F.C.C. No. 260, para. 2.2.1(J), permits the "value added" service provided by FCC-certificated carriers offering a composite data service.

25. Courts and regulatory commissions have generally upheld the established practice of common carriers to limit or prohibit the resale of communication services. They have rejected attacks that such restrictions are discriminatory or unreasonable, holding that resale would destroy the telephone company's rate structure, threaten the traditional concept of regulation and interject a middleman into the provision of telecommunications services in contravention of public policy.* The New York Supreme Court in People v. New York Telephone Co., 175 Misc. 128, 130, 22 N.Y.S.2d 837, 839 (Sup. Ct. Albany Co. 1940), aff'd, 262 App. Div. 440, 29 N.Y.S.2d 513 (3d Dep't 1941), aff'd, 287 N.Y. 803, 40 N.E.2d 1020 (1942) upheld the power of the Public Service Commission to regulate the terms on which resale of communication services would be permitted. The Court discussed the policy behind prohibitions of resale, as follows:

"If it had no such power, the utility could, by wholesaling its service to private enterprises, which were themselves beyond the pale of public regulation, effectively destroy a rate structure and a frame of regulation designed, in the view of the Legislature, to promote equal public utility service in the community as a whole."

* Resale prohibitions have also been upheld in the electric industry. See, for example, Campo Corp. et al. v. Feinberg et al., 279 App. Div. 302, 110 N.Y.S.2d 250, 256 (3d Dep't 1952), aff'd, 303 N.Y. 995, 106 N.E.2d 70 (1952); Tweed v. Delaware Power & Light Co., 11 P.U.R.3d 226, 233 (Del. Super. Ct. 1955); Re The Cleveland Electric Illuminating Company, 64 P.U.R.3d 225, 228 (Ohio Pub. Util. Comm'n 1966); Florida Power and Light Co. v. State, 144 So. 657 (Fla. 1932); Boston Real Estate Bd. v. Dep't of Pub. Util., 136 N.E.2d 243 (Mass. 1956); Chicago Housing Authority v. Illinois Commerce Comm'n, 169 N.E.2d 268 (Ill. 1960); Pennsylvania Pub. Util. Comm'n v. Duquesne Light Co., 64 P.U.R.3d 162 (Pa. Pub. Util. Comm'n 1966); Lewis v. Potomac Electric Power Co. et al., 64 F.2d 701 (D.C. Cir. 1933).

26. The Missouri Public Service Commission in William and Calmer, Inc. v. Southwestern Bell Telephone Company, 70 P.U.R.(n.s.) 35, 42 (Mo. Pub. Serv. Comm'n 1947), likewise upheld the telephone company's policy against resale and found the prohibition to be reasonable. The court stated:

"Are these rules reasonable? We think so. Otherwise, a third party is established between the company and the users of its service; the middleman could use only the equipment which he deems to be necessary and thereby determine for himself the character of service to be rendered; regulation would break down or at least be threatened and if permitted in this situation there would be no limits to such resales of utility service for it could not be restricted to one building or a group of buildings or even to a city block. Carried to an absurd conclusion the company might in the end be furnishing a substantial portion of its service at wholesale."

See also: Johnson v. Mountain States Telephone and Telegraph Co., 159 P. 526 (Utah 1916); Clerf et al. v. The Bell Telephone Company of Pennsylvania, 44 P.U.R.(n.s.) 74 (Pa. Pub. Serv. Comm'n 1942); M.H. Budd et al. v. Southwestern Bell Telephone Co., 28 P.U.R.(n.s.) 235 (Mo. Pub. Serv. Comm'n 1939); Building Industries Exhibit v. Public Utilities Comm'n, 80 N.E.2d 836 (Ohio 1948); Gelsam Realty Co. v. New York Tel. Co., P.U.R. 1929A, 224 (N.Y. Pub. Serv. Comm'n 1928); 1015 Chestnut Street Corp. v. Bell Tel. Co. of Pa., P.U.R. 1931A, 19 (Pa. Pub. Serv. Comm'n 1930); Private Wire Contracts, 50 I.C.C. 731 (1918).

III. EFFECT OF RESALE AND SHARED USE
ON PRICING AND SERVICE

27. The provisions for resale and shared use described above have developed in an environment in which the telephone company had the responsibility for providing end-to-end quality service. In carrying out this responsibility as a regulated common carrier, the telephone company has generally provided service itself, directly, and not through middlemen. The resale exceptions noted in the previous Section of these Comments have been rare.

28. Services have also been priced on the basis that resale and shared use will generally be limited. Where revenues are usage sensitive, sharing provisions are wider in extent than where revenues are not usage sensitive. In the latter case, aggregation of customer demand will often result in changed revenue/cost relationships; and a rate which is appropriate with limited options for resale and sharing may be inappropriate when these options are altered.

29. Thus, in any consideration of proliferation of resale and shared use, it is necessary to consider the effects of this expansion on pricing and service. In this Section III we shall consider this impact.

A. Impact of Resale and Shared Use Provisions
on Rate Structure and Pricing

30. Changes in resale and shared use provisions may require changes in the following ratemaking techniques or their application:

- the use of flat-rate or usage sensitive pricing;
- the use of nationwide averaged costs;
- the philosophies underlying private line services and WATS and their relationship to MTS.

In addition, the extent of resale and shared use will affect the assignments of costs between interstate and intrastate (i.e., Separations), and as a consequence will impact on intrastate as well as interstate rates.

31. As will be seen below, increased resale and sharing is likely to result in changes in revenue/cost relationships, the necessity to reprice services (including probable increases in basic MTS and local intrastate services), changes in the nature of the TELPAK and WATS offerings, and further departures from the use of nationwide averaged costs in fixing rates.

1. Flat rate pricing as contrasted with
usage sensitive pricing

32. As we have seen, some interstate rates are usage sensitive. Others are fixed on a flat-rate basis, and some schedules combine features of both. The impact of resale and shared use may be expected to differ in the several types of cases.

33. Interstate MTS is priced on a per call basis and thus revenues are usage sensitive. Since the telephone company receives twice as much revenue for two comparable calls as for one, the company's revenues are the same whether its customer makes both calls or resells to another the right to make one or both of the calls.* Costs of this service are also, to a large extent, usage sensitive, and resale of the service therefore presents fewer problems in terms of revenue/cost relationships than do flat-rate types of pricing. (Changes in cost disproportionate to changes in revenue, however, will arise if, for example, resale results in changes in time of day calling patterns.)

34. The pricing of services with flat-rate characteristics, however, may be affected by the extent of resale and shared use. Changes in price may have to be made if the costs of providing the service are usage sensitive or if there are cross-elastic effects. These may be shown by contrasting two services - a single full-time private line and the initial period of a WATS line.

* Shared use is impractical since the exchange line, which would be shared, is provided under varying intrastate tariffs utilizing varying combinations of flat rate and usage sensitive pricing. The prohibition of a surcharge on resale arises mainly in the hotel type of case, where hotels, hospitals, motels and the like are not permitted to add a surcharge on interstate calls made by their patrons.

35. The rate for a single full-time private line is essentially usage insensitive. The customer pays the same whether he has the line in use 24 hours a day or uses it for only a few minutes a day. And since the line generally uses dedicated, full-time circuitry, circuit costs are also essentially usage insensitive. For these reasons, revenue/cost relationships of the private line, itself, do not change materially whether one customer uses it or two share its use. Accordingly, AT&T's interstate tariffs permit sharing (i.e., joint use) of this type of service, with provision for additional charges to cover the additional terminal and administrative costs when two or more customers use the same service.

36. The situation is different with WATS. The initial period flat rates, and therefore the revenues, are usage insensitive, but the costs in the initial period are not. WATS is a switched service, involving usage sensitive central office and trunking costs. If two or more customers combine to use a WATS line, they will cause more costs in the initial period than if only one of them uses it.* A rate which is based, as it now is, on average use by single customers may well be an inappropriate rate if customers are permitted to combine, thus raising the average use per

* There obviously would be no economic reason to share if either customer, himself, will make full use of the initial period.

line. Reasons such as these justify the present prohibitions on resale or shared use of WATS lines (with the very limited exceptions stated in Tariff F.C.C. No. 259, Section 2.2.1(A) to (C); see paragraph 20, above).

37. Similar considerations apply to TELPAK. The base capacity rates are flat-rate (see paragraph 21, supra), and the revenues are to that extent usage insensitive, whether the subscriber uses the full quantity of channels to which he is entitled or not. Costs, however, vary, depending on the actual number of channels ordered for use by the customer. Hence a rate based on average use by single customers may be an inappropriate rate if two or more customers are permitted to aggregate their needs to subscribe to a single TELPAK base capacity.

38. The effect of permitting additional resale and sharing options for any service will be to offer customers who take advantage of the option a lower effective price. It is therefore necessary to consider the cross-elastic effects of these price changes implicit in resale and shared use options. Other things being equal (convenience, speed of service, etc.), a customer will subscribe to an individual flat-rated service when an economic cross-over point is reached, i.e., where the charge to him of the service ordered (the flat rate) is less than the charge for the alternate services available to him. The monthly charge for a single private line may, for instance,

be equivalent to that for 100 calls between the same two points. If the customer makes only 75 of these calls a month, he probably will not subscribe to a private line and will continue to use message service. If, on the other hand, he anticipates making 125 of these calls a month, he may subscribe to the private line, with the effect that usage, revenue and costs of MTS will decrease. Obviously, it is easier for the combined needs of two or more customers to reach these economic cross-over points than it is for the needs of each customer individually.

39. The implicit, effective price decreases resulting from proliferation of resale and shared use opportunities will tend to shift usage and revenue out of MTS and in the direction of private line, WATS and TELPAK. In addition, there will be shifts among these services, depending in each case on the economies to the aggregated customers in each particular situation, as compared to the alternate service for each.

40. Because of these shifts in revenue/cost relationships and because of changes in demand ~~among~~ services, repricing of services may be necessary. See paragraphs 49-59, below. Any increases in price are then likely to result in decreased demand for the services, just as the savings due to sharing may result in stimulation of business. These repression/stimulation effects would also have to be considered in the repricing of the services.

41. In particular, one of the side effects of shifts among services and of repression/stimulation can be a change in the assignment of costs as between interstate and intrastate in the jurisdictional Separations process. The traffic nonsensitive costs of providing exchange telephone service (i.e., costs of the station equipment and local loop, and some equipment costs in the central office) are assigned in proportions based in some measure on comparative use as between intrastate and interstate. If the effect of a change in resale and shared use options is a decrease in interstate MTS and WATS usage, then less of the costs will be assigned to interstate and more to intrastate. On the other hand, if as a result of these changes, there is more usage of interstate MTS and WATS, then more costs will be assigned to interstate. Either result could require further changes in both interstate and intrastate rates. (The estimate discussed below, paragraphs 60-64, would indicate that the effect in the first year would be decreased interstate usage, and therefore increased intrastate cost assignments and higher intrastate rates.)

42. In summary, then, material changes in resale and shared use options will inevitably result in changes in the revenue/cost relationships of virtually all interstate services, both directly and through Separations;

this may require repricing and restructuring of these services. These would not be one-time adjustments. The effects of these changes will continue over time and will not be susceptible of pinpoint forecasting. The process of repricing will have to be repeated frequently, for many years, as further effects develop.

2. Average pricing

43. Proliferation of resale and shared use options would also impact on the use of nationwide average-cost pricing techniques. Historically, the rate structure within each interstate service has been based upon the principle that rates for like services should be uniform for like distances, despite the fact that costs may vary from route to route and customer to customer. Thus, an MIS customer who calls from New York to Chicago pays the same as a customer who calls an approximately equal distance, say from Tucker, Georgia to Aldine, Texas. The unit costs on the busy New York-Chicago route are of course substantially lower than on a sparsely-trafficked run such as Tucker-Aldine. The rates are the same, however, since the distance covered is approximately the same. The differing unit costs for calls are averaged out over the entire nationwide interstate message service. This averaging process has been justified as having the

desirable social consequence of promoting universal telephone service in accordance with the aims of the Communications Act, Section 1.*

44. The use of averaging-of-cost pricing techniques in private line services left the high traffic density, low unit cost intercity routes vulnerable to the inroads of the competitive services of other common carriers, which have not chosen to serve the high unit cost routes which have sparse traffic. The Bell System has found it necessary to depart from the traditional pricing techniques by establishing Hi-Lo rates for private line voice grade (Series 2000 and 3000) services. If resale and shared use options proliferate, the same type of busy-route, sparse-route considerations would increase present pressures for further rate de-averaging.

45. Other things being equal, a customer will tend to choose to share service if it means lower effective charges than he would otherwise pay. As a practical matter, however, the option to share is available only if he can find another customer with comparable route needs, with whom he can share. The option is obviously worthless if there is no other customer with complementary needs.

* The Commission recognized in the Notice (para. 4) that they "... are mandated by the Communications Act of 1934 to regulate interstate and foreign commerce in communications so as to make available to all the people of the United States rapid, efficient nationwide and worldwide communications services with adequate facilities at reasonable charges (47 U.S.C. § 1)."

It is much more likely that such sharing pairs or aggregations can be formed on high density routes than on sparse ones. Further, middlemen - those who would be in the business of seeking out opportunities for resale and shared use - will certainly concentrate on the heavily-trafficked routes, where they will find the choicest business. Hence, it is the large city customers who are more likely to be able to take advantage of the savings from resale or joint use.

46. As is shown below, the estimated net revenue effect* of unlimited resale and shared use in the first year, without pricing changes, is a decrease of more than \$178 million. Other things remaining equal (including overall revenue requirements), rate levels would have to go up enough to make up this deficiency. Thus, the customer who is unable to take advantage of savings afforded by a resale or shared use option would also find that his rate for unshared service is increased simply because other customers are able to take advantage of sharing options.

47. In summary, proliferation of resale and shared use would tend to require residential users, small-town business subscribers, and others unable to take advantage thereof to pay higher effective rates (perhaps a competitive disadvantage) as compared with large city business users who are able to utilize the options. The de-averaging effect is two-fold, they would pay higher service rates and be unable to take advantage of savings from resale and sharing.

* Decrease in revenues plus increase in costs.

3. Particular services and resultant effects on MTS

48. Proliferation of resale and shared use will have specific impacts on such services as TELPAK, WATS and private line. In turn, these impacts will affect the rates for basic MTS.

a. TELPAK

49. TELPAK is a private line service that affords a variety of options to the customer for voice and data uses. There are two classifications: TELPAK C, which provides a maximum base capacity of 60 equivalent voice grade channels, and TELPAK D, which provides a maximum base capacity of 240 equivalent voice grade channels. When used to provide individual voice grade channels, TELPAK is a bulk rated private line service. The effective reduction in charges as compared to those for an individual private line varies, depending upon such factors as length of haul and base capacity fill.*

50. TELPAK has been justified as a competitive response to the private microwave systems authorized by the

* For example, at 200 miles, and based on the current average fill levels, the reductions are 23 percent and 44 percent, respectively, for TELPAK C and D, as compared to the present Series 2000 (H1D) charges.

Commission's Above 890 decision. See: In Re American Telephone & Telegraph Co., Docket No. 14251, 38 F.C.C.370, 387 (1964), 37 F.C.C.1111, 1117 (1964), reconsideration denied, 38 F.C.C.761 (1965), aff'd; American Trucking Associations, Inc. v. F.C.C. 377 F.2d 121 (D.C. Cir. 1966), certiorari denied, 386 U.S. 943 (1967). As the Bell System showed in Docket No. 17457, and as is apparent from these Comments, the effect of full sharing of TELPAK would be to drive the average fill toward the maximum base capacity, and also to cause shifts from TELPAK C to TELPAK D. This would mean that the costs of providing the service would increase, disturbing the revenue/cost relationship. Rate increases would be necessary. Without such rate increases, unlimited sharing of TELPAK would simply result in a lower priced private line service, thereby removing the bulk discount feature. This would lower levels of revenues of all private line services.

51. The necessary price changes for TELPAK would force TELPAK rates closer to the aggregate rates of the full number of individual channels which can be included in TELPAK base capacity. These changes in rates would have several effects:

- As a competitive response to private microwave, TELPAK's effectiveness would be diminished or lost. There would thus be more of a tendency, particularly by large customers such as the

United States Government, ARINC, etc., to give up their TELPAK service in favor of private microwave.

- Higher TELPAK rates would also lead to competitive losses to other common carriers.
- Such losses of TELPAK business would result in a diminished contribution to overall common costs of the company or indeed to a complete loss of such contributions, thus putting pressure on basic MTS rates to go up.
- Raising TELPAK rates towards the level of the aggregate of the individual channel rates would of course lessen the utility of the service to those able to take advantage of resale and shared use options.

52. It is a reasonable conclusion from the above that TELPAK could not survive unlimited resale and sharing. This would be a severe blow not only to the customers who now subscribe to it - the United States Government, in particular - but also to users of MTS, who might have to pay higher rates to make up for loss of contribution. AT&T would have to move to other forms of competitive pricing - perhaps further development of de-averaged rates. It is of course not clear at this time whether such alternatives would be as effective in helping to keep basic MTS rates lower than they would have to be in the absence of competitive pricing.

b. WATS

53. WATS has a favorable revenue/cost relationship. However, this relationship is a function of usage characteristics at the present rates.

54. A proliferation of resale and shared use would tend to alter the usage characteristics of WATS during peak and off-peak load periods. The effect would be to alter revenue/cost relationships.

55. Shared use of WATS may lead to a significant diversion of MTS usage to WATS, a shift not envisioned in the determination of present WATS rates. This diverted business may cause a loss of revenues without a compensating reduction of costs.

56. WATS rates with resale and shared use permitted may have to be higher than they now are. These increased rates would cause users to shift back to MTS or from Full Business Day to Measured Time WATS. Since the revenue/cost relationship for WATS is more favorable than the most comparable segments of the MTS market, such shifts may reduce the revenue/cost benefits of WATS in keeping MTS rates lower than they otherwise would be.

c. Effect on private line

57. The effect of allowing resale and shared use

in TELPAK and WATS would be to cause private line users to group together in order to shift to these services. This would be particularly true on the high traffic density, low cost routes. This would upset the private line revenue/cost relationships, and would result in a loss of the contributions which the non-TELPAK private line services now make to other services, particularly MTS.

58. As a result of the shift of more profitable private line business to alternate services, private line rates may well have to be increased, if competitively possible. Increasing private line rates on the heavy traffic routes may not be feasible since that would accelerate a shift to the service of competing common carriers and would tend to increase the cross-elastic shift to TELPAK and WATS. These shifts would further erode the contributions provided to MTS from the private line services, causing pressure to increase MTS rates. It is likely that the result would be a further development of de-averaged Hi-Lo rates, with a greater difference between the Hi and the Lo rate, and also higher MTS rates.

d. Effect on MTS

59. As already indicated in the preceding paragraphs, MTS rates would in all probability have to be raised as a result of the altered revenue/cost relationships and losses in contribution from other service to MTS which would result

from expanded resale and shared use. An additional effect would be that users would tend to group together to purchase WATS, private line and TELPAK, as lower priced substitutes for MTS. These cross-elastic shifts are most likely to occur on high traffic density, low cost routes. These shifts from one service to another would no doubt be actively promoted by middlemen. The loss in net revenue will necessitate restructuring MTS rates, possibly into a relatively complex Hi-Lo type de-averaged pricing structure. As a result of losses of interstate MTS business, additional costs would be assigned to intrastate, putting upward pressure on basic exchange rates (see paragraph 41, supra).

4. Aggregate revenue and cost effects of unlimited resale and sharing

60. AT&T has attempted to quantify the effects which unlimited sharing would have on revenues and costs. The indications are that, without repricing, there would be substantial losses of revenue and increases in cost (see below). However, it was not possible to make a study of all the probable effects, since this would have required enormous amounts of time and manpower and large costs. To construct the economic model with a data base of individual customers weighted according to average telecommunications needs, it would have taken the full time of approximately 70 people for approximately three years, at an approximate cost

of \$20 million. It was concluded that this approach was not feasible. Thus, it is impossible, within the confines of this docket, to evaluate fully the impact on net earnings of the limitless resale and sharing possibilities.

61. As described below, AT&T has been able to make an estimate of the effect of unlimited sharing upon Bell interstate revenues and costs, based on current 1974 service volumes, rates and service offerings. The estimate assumes that full resale and sharing have been in effect for approximately one year, and that business customers have taken advantage of resale and sharing opportunities for that period. It was not possible to consider all shifts of business, so that the revenue losses found are below the amount reasonably to be expected. Thus, the estimate quantifies only the effects of the shifts from MTS, WATS, private line, and non-Bell services to TELPAK, and shifts from Measured Time WATS and MTS to Full Business Day WATS.* The study also determined the added cost of facilities necessary to satisfy the demands for service. The detailed methods used to make this estimate are explained in Attachment 1 hereto.

* It was impossible within time and cost limitations to consider the following shifts, which would have intensified the study results.

1. Shifts from MTS and WATS to shared Series 2000/3000/8000 private lines.
2. Shifts from below voice grade services to shared voice grade.
3. Any shifts into or out of Inward WATS.
4. Shifts of any service into Measured Time WATS.

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62. The estimate indicates that unlimited resale and sharing of communications services would conservatively result in a loss of net revenue (decreased revenues and increased costs) in excess of \$178 million annually.

63. An evaluation was also made of the effect on traffic volumes and circuit requirements due to the shifts already described. The net effect of all anticipated shifts involving the switched network is an expected annual decrease of 31.6 million messages, amounting to 149.5 million minutes of DDD usage.* This decrease in usage would reduce the number of circuits in the common user network by about 3800 intertoll trunks, but is more than offset by the increased circuit requirements for fully shared TELPAK of 24,000 new circuit sections, requiring an additional 9 million airline miles of facilities. As discussed previously, these new circuits would primarily be between major metropolitan areas. The net addition of over 20,000 circuit sections would conservatively be expected to require approximately 1900 additional channel groups. Substantial capital investments would be required to satisfy the stimulation caused by unlimited sharing.

64. Thus, under the most conservative estimate, unlimited resale and sharing will result in substantially decreased revenues and increased costs necessitating large scale repricing and restructuring.

* This would result in an increase in intrastate costs due to separations changes, and therefore in higher intrastate rates.

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B. Impact of Resale and Shared Use
Options on Service

65. While sharing of services without middlemen appears to raise relatively few service problems, proliferation of resale will undoubtedly cause service and forecasting difficulties. The reason is the middleman involved in resale. He isolates the consumer, who has the need for communication services, from the telephone company, which provides the necessary facilities.

66. The Notice states (para. 1) that "the middleman has assumed an important role in nearly all aspects of commerce throughout our nation's history." It is also true that nearly all aspects of this commerce have involved the manufacture and sale of commodities. Middlemen are generally necessary for the effective distribution of commodities, but telephone companies have the widespread facilities which enable them to deal directly with customers. Telecommunications is not a commodity, but an ongoing service: the telephone company is actively and directly involved with satisfying the consumer's needs every time the consumer picks up the telephone. Moreover sale by a middleman of a defective commodity will usually impact on only the single consumer affected, while the service of all telephone customers can be affected by poor service caused by the interposition of a middleman.

67. Consumers of commodities have, from time to time recently, expressed dissatisfaction with the difficulties of obtaining service and repairs from middlemen and, in the alternative, from those in the chain of sales all the way back to the manufacturer. Many manufacturers have found it necessary to establish service organizations in order to maintain their good will. There is no reason to believe that a middleman who is not himself a regulated provider of communications will be able to satisfy the needs of communications consumers. The direct interaction today between customer and telephone company tends to promote good service. Delays and inefficiencies arising from the barrier between them - the middleman - will detract from service. Proliferation of resale would certainly call for regulation of the middlemen in order to attempt to hold them to as good a quality of service as possible.

68. In addition, it is well established that common carriers provide a service affecting the public interest and that regulation is required. The middleman who resells what the telephone company provides is merely substituting itself for the common carrier in dealing with the public. The middleman should therefore be regulated in the same manner and to the same degree as the common carrier. This would include scrutiny of rates and profits and regulation to assure that middlemen do not discriminate among customers.

69. A particular difficulty raised by the interposition of middlemen would be that it would make it more difficult to forecast future demands for service, and therefore to provide the optimum plant needed in the future. Rosy predictions by middlemen of their prospective sales, for instance, might lead to construction of more plant than actually needed, and therefore to higher costs and rates for all consumers. Similarly underestimates of demand might lead to facilities shortages. Because of the nature of the telephone system, this would also affect all telephone users.

* * * * *

70. It is apparent from the foregoing that the subject of resale and shared use is not a simple one. Significant changes in the present provisions may require drastic pricing changes, may change the nature of service offerings, may detract from the ability of the telephone company to provide good service, and are likely to cause increases in the rates for the basic interstate service, MTS.

IV. POSSIBLE MODIFICATION
OF PRESENT RULES

71. Section III of these Comments has shown that unlimited resale and shared use would involve significant changes in pricing and in demand for particular services and would be an impediment to the provision of high quality service. The estimate, discussed above, which is embodied in Attachment 1 to these Comments, shows an estimated annual loss of more than \$178 million in net revenues from unlimited resale and sharing, and this would have to be made up by repricing. There is no apparent need which would justify such a wholesale restructuring of tariff regulations with such drastic results.

72. AT&T tariff provisions on resale and sharing have been modified throughout the years in particular situations where appropriate, e.g., to encourage the application of technology to communications. Thus, current private line joint use provisions recognize the evolution of computer and business machine technology, which has made it possible to apply multiplexing technology to create channels for use in other than direct voice communications. These provisions encourage the application of such technology to existing services and thereby promote the use of data related communications. More recently, the composite data service vendor provisions were added to satisfy the needs of the so-called "value added" carriers. Both of these provisions modified AT&T's policy in

regard to resale and sharing for other than direct voice communications and both were filed to encourage the application of computer and data technology to communications.

73. Within the rapidly expanding arena of computer-related information systems, and elsewhere, there may exist other possibilities for adding new dimensions to existing communication services. AT&T stands ready further to revise its tariffs to provide for such augmented use of its services. These cases, however, should be considered on an individual basis. A careful balancing of the interests of all subscribers is involved, and any party requesting modification of resale and sharing provisions should show clearly why the tariff changes would be justified. The blunderbuss authorization of unlimited resale and shared use would have consequences too serious to contemplate.

CONCLUSION

Resolution of the varied and complex issues raised by this docket could affect the basic ratemaking, service and regulatory philosophy of the telecommunications industry, as well as the nature of, and rates for, the service offerings made by the Bell System to the public. AT&T respectfully submits that very careful consideration of the consequences which may result from expanded resale and sharing is

needed before any modification of existing provisions is undertaken. Any party advocating modification of the traditional philosophy on resale and sharing should bear the heavy burden of justifying the modifications.

Respectfully submitted,
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

December 11, 1974

APPENDIX

Question 1: What is the justification for the restrictions on resale and third party traffic in the currently effective private line service of AT&T and Western Union?

Discussed in paragraphs: 3-6, 23, 25-28, 30, 34, 36-48, 50-52, 54-59, 61-67, 69, Attachment 1

Question 2: Would the public interest be served by a removal of all restrictions on resale or private line services? What would the effect thereof be on:

- a. AT&T and Western Union: Consider the impact on such factors as facilities fill and planning, traffic volumes, revenues, and rate of return for the company as a whole and by affected service or particular route.
- b. The Communications Industry apart from AT&T and Western Union: How would removal of resale restrictions affect the viability of other carriers with their own lines of communication, the stimulation of research and development, the market for new equipment, the development of new carriers, the stimulation of the market for wire and radio communications?

- c. Communications users: Discuss possible new services, new pricing structures, effect on cost of existing services, better communications management and stimulation of the use of the most efficient type of carrier for each type of service.

Discussed in paragraphs: 3-6, 30, 33-42, 44-48, 50-52, 54-59,
61-67, 69, Attachment 1

Question 3: If a total removal of restrictions on resale is not desirable what specific restrictions are recommended? Fully justify any recommended restrictions and discuss in terms of the factors listed in question two.

Discussed in paragraphs: 20, 22, 23, 34, 36, 37, 50-52, 54-58,
67, 68, 73

Question 4: Consider restrictions on resale of other services of AT&T, Western Union and other carriers in the same manner as called for by questions one, two and three above.

Discussed in paragraphs: 18-20, 36, 38, 39, 43-47, 54-56, 59,
61-64, 66-69, Attachment 1

Question 5: What is the justification for limiting the sharing of private line services to, generally, voice

grade and under services and for requiring those desiring to effectuate a sharing arrangement to have a communications need of their own?

Discussed in paragraphs: 14, 23, 25, 26, 35, 37-39, 42, 44-47, 49-52, 59, 61-64, 72, Attachment 1

Question 6: Would the public interest be better served by removing all restrictions on the sharing of private line facilities? If that would not be desirable, recommend necessary or desirable restrictions and justify any recommendations taking into consideration the effect of each on the carriers, other elements of the communications industry and the using public.

Discussed in paragraphs: 3-6, 30, 33-42, 44-48, 50-52, 54-59, 61-67, 69, Attachment 1

Question 7: What is the public need for sharing of private line facilities? Discuss any new technologies being developed which would make sharing more attractive, new user applications of sharing and the relationship between the need for sharing and the availability of facilities for resale. Specifically, what need for sharing would remain if all restrictions on the resale of private line facilities were eliminated?

Discussed in paragraphs: 24, 72, 73

Question 8: What is the need for sharing of other services of AT&T and Western Union as well as the services of any other communications common carrier?

Discussed in paragraphs: 24, 72, 73

Question 9: What is the justification for provisions of Section 2.2.1 of AT&T's Tariff F.C.C. No. 260 and Western Union's Tariff F.C.C. No. 254 which accord special tariff treatment to the airlines, corporate conglomerates, stock exchanges and their members, and others? Do such tariff provisions, constitute in whole or in part, unjust or unreasonable discrimination, or subject any person or class of persons to undue or unreasonable prejudice or disadvantage, or give any undue or unreasonable preference or advantage to any person or class of persons, within the meaning of Section 202(a) of the Communications Act?

Discussed in paragraphs: 24, 72

Question 10: Should the provisions under consideration in question 9 be found to involve unlawful discriminations, what action should the Commission

take to remove such unlawfulness? Fully justify any recommended tariff changes and discuss their consistency with any recommended changes with regard to resale and shared use of private line facilities in general.

No response to this issue is required as the provisions under consideration do not involve unlawful discrimination.

Question 11: Should the Commission regulate the sharing agreement made between customers and joint users and, if so, to what extent and in what manner? What reports should be required? Specifically consider possible guidelines governing the manner in which the cost of effectuating the sharing arrangement should be shared so that there is a clear distinction between sharing and resale?

Regulation of sharing agreements under existing tariffs is not necessary. Any further sharing should not be authorized other than indicated in paragraph 73.

Question 12: How should the Commission regulate the entities reselling communications services and facilities? If in some instances full regulation would not be desirable recommend the manner and extent to

which regulation is desirable. Specifically consider the most desirable manner of rate regulation for the various types of resale entities. For such entities would the setting of rates on the basis of operating ratios rather than rate base-rate of return be more effective? What accounting system and financial reporting should be required? What regulation over commencement of operation, standards of service and termination of service is desirable?

Discussed in paragraphs 67, 68

F.C.C. DOCKET NO. 20097

Quantification of the Estimated Effects Upon Bell Interstate
Services of Unlimited Resale and Sharing

QUANTIFICATION OF THE ESTIMATED EFFECTS UPON BELL INTER-
STATE SERVICES OF UNLIMITED RESALE AND SHARING

Purpose of Attachment

This attachment outlines the methods used to provide an estimate of the initial effects upon Bell interstate revenues and costs, absent any rate changes and assuming unlimited resale and sharing in effect for one year. This attachment also provides a summary of the resulting estimate.

Study Constraints

In making this estimate, effort was concentrated upon examining resold or shared TELPAK and Outward WATS since, in the first year, those services were expected to be the most susceptible to resale and sharing. Since a comprehensive study of resale and sharing would require considerably more time than was available for this estimate, a number of potentially important shifts were not considered. Among these were shifts from MTS and WATS to resold single channel private line, shifts of non-voice grade service to resold voice grade facilities, shifts involving Inward WATS service, and shifts involving the use or subdivision of broadband channels. Perhaps the single largest portion of the market excluded from this analysis is the residence market which constitutes about 52 percent of the MTS market. The consequences of extending resold WATS and private line to

serve residential MTS customers have not yet been examined. Even for business customers, shifts from MTS and WATS to TELPAK were considered only in the most populous areas of the country. By excluding these segments of the market from consideration, the estimated impact on Bell's revenues and costs is understated. Therefore, the resulting estimate may be termed a "least loss" estimate. It should be emphasized that the detailed study analysis required for a complete evaluation of all effects of changes in resale and sharing provisions would require a very considerable amount of time and effort. The instant analysis, therefore, may be considered as only a "first cut" attempt to assess such effects within the time constraints of this proceeding. Any estimate of the time and effort required for more in-depth analysis would, of course, depend on the specific factual variables examined.

Study Base and General Methodology

The results of this estimate are based upon current 1974 traffic volumes, rates, and service offerings. No attempt has been made to project changes in terms of future growth, changed rates, or new service offerings.

It is assumed in this analysis that full resale and sharing have been in effect for approximately one year, and that in this time frame, business customers have begun to take advantage of resale and sharing provisions in order to reduce

their communications expense. It is anticipated that existing private line users would move rapidly to take advantage of the billing reductions available through shared TELPAK. Therefore, the existing interstate private line services were examined and such services were consolidated into shared TELPAK service where to do so would reduce customer billing. Also examined was that portion of business-only interstate MTS billing among the major metropolitan areas and larger cities (as represented by Bell's High Density rate center list Tariff F.C.C. No. 264). An estimate of the probable shifts to TELPAK and WATS was also made. The basis for such estimate is that in addition to sharing of TELPAK and WATS by businesses, it is also anticipated that some business MTS and Measured Time WATS traffic would be diverted to Full Business Day WATS by middlemen. In calculating shifts to resold WATS, allowance was made for a profit by such middlemen. Stimulation of service resulting from the availability of lower priced communications is also included in the estimate.

In order to quantify the changes that occur due to resale and sharing, it is necessary to have a reference market against which to measure the new market quantities. The reference market used in this estimate was the projected 1974 "test rate" market used in F.C.C. Docket No. 19919. This market reflected considerable shifts to specialized common carriers (SCCs) as compared with what Bell's market would have been without SCC competition.

With no change in Bell's rates, the effective rates available to business customers for resold and shared services would be generally lower than those used for SCCs in the Docket No. 19919 market study. This causes a significant shift from the SCCs back to Bell and such shift is reflected in the estimate contained herein. However, if the SCCs react by lowering their own prices, such shifts back to Bell might not occur. Thus, Bell's revenue losses would be greater than shown by this estimate.

In order to complete this estimate within the available time frame, relevant data and methods from past studies were used whenever possible. The two primary sources for this estimate were the TELPAK sharing estimate made in connection with F.C.C. Docket No. 17457 and the study underlying the data presented in F.C.C. Docket No. 19919.

Summary of Results

Even in a market that has only begun to adapt to unlimited resale and sharing, the harmful financial effects would be considerable. The resulting market movements would cause Bell's costs to increase. The net revenue effect of these market movements would be negative, however, so that while costs would increase, revenues would decrease. The estimated effects of these changes are shown on the following page.

Estimated Interstate Revenue and Cost Effects*

(Millions of Dollars Annually)

Shifts from Private Line to TELPAK	-112.0
Shifts from SCCs to TELPAK	+ 37.8
Shifts from MTS and WATS to TELPAK	- 24.4
Shifts from MTS and Measured Time	
WATS to Full Business Day WATS	- 38.8
Net Change in Private Line Equipment	+ <u>3.1</u>
REVENUE EFFECT	-134.3
COST EFFECT	+ <u>44.2</u>
TOTAL NET EFFECT	-178.5

* Based on 1974 volumes and assuming that tariff revisions allowing unlimited resale and sharing have been in effect for one year. Since a comprehensive study of resale and sharing would require considerably more time than was available for this estimate, a number of potentially important shifts were excluded. Therefore, this may be termed a "least loss" estimate. See text for further details.

Outline of Methodology

General

The following material outlines the methods used to estimate each of the shifts considered, and shows the resulting revenue effect. All revenue and cost data are annualized.

MTS Shift to TELPAK

The existing base of MTS traffic was used as the starting point. Before testing this base for shifts to TELPAK, it was reduced in size by removing those market segments judged unlikely to shift to resold or shared TELPAK within the first year. The segments removed were:

1. All residential MTS.
2. All business MTS not among the major metropolitan areas and larger cities as represented by Bell's High Density rate center list in Tariff F.C.C. No. 264.
3. All person-to-person, credit card, third number, Enterprise Service MTS, and coin MTS.

Thus, the MTS segments used for the purposes of this estimate consist of the Dial Station traffic in the business market and that small remaining portion of operator handled traffic not identified above.

It was estimated that if unlimited TELPAK sharing were in effect, TELPAK sections would exist between major metropolitan areas at a fill level that would make additional single voice grade channels available at \$0.50 per mile on the average, plus \$80.00 per channel for terminals. This assumed fill level is conservative. Our major TELPAK customers are now exceeding that fill level despite the fact that sharing is not permissible.

Since single channel private line service between High Density rate centers is currently available from Bell at \$0.85 per mile plus channel and station terminal charges of \$120.00 per channel, the shared TELPAK rates would represent a price decrease even between High Density rate centers.

Using methodology explained in detail in Bell Exhibit 4 of Docket No. 19919, an estimate was made of the amount of shift from MTS to shared TELPAK that such a price decrease would cause. In general, the methodology in Docket No. 19919, employed in this estimate, was based upon economic cross-over analyses. Based on data concerning previous customer behavior, and through the use of computer analysis techniques, the procedures were applied to Bell's interstate private line, MTS and WATS bases to quantify demand shifts. The annual estimated MTS revenue loss resulting from MTS shifts to TELPAK would be approximately \$58.2 million.

Customers shifting from MTS to shared TELPAK would experience lower prices. This should result in stimulation

just as a lowering of MTS prices would. For purposes of this estimate the effects of stimulation were included, equal to half the savings that the customer would otherwise experience.

Including stimulation, the amount of private line revenue gained as a result of MTS shifts was equal to \$36.2 million. With \$58.2 million lost from MTS, this gives a net revenue loss of \$22.0 million for this market segment.

MTS Shift to WATS

The same reduced MTS base was used here as was used for estimating MTS shifts to TELPAK, except that the base was further reduced by the amount of shift to TELPAK previously estimated.

It was assumed that with Full Business Day WATS available for resale, resellers would divert existing MTS to that service where it would be profitable for them to do so. It was further assumed that each of their WATS lines would carry about 176 hours of conversation per month. This assumption is based on an analysis of the usage characteristics of our large WATS customers. Allowance was made for the resellers' handling costs and profit.

Traffic in the MTS base was then priced at what the effective resold WATS rate would be, and the result was compared to the existing MTS charges. This produced the price decreases varying by distance available to MTS customers.

The methodology referenced under "MTS Shift to TELPAK" was used to estimate the amount of shift that such price decreases would cause. Likewise, an amount of stimulation was included, equal to half the savings that the customer would otherwise experience.

Including stimulation, the amount of Outward Full Business Day WATS gained as a result of MTS shifts was equal to \$25.4 million. With \$58.1 million lost from MTS, this gives a net revenue loss of \$32.7 million for this market segment.

WATS Shift to TELPAK

The existing base of Outward Full Business Day WATS traffic was used. Before testing this base for shifts to TELPAK, it was reduced in size so that it contained only that traffic among major metropolitan areas and larger cities, as represented by Bell's High Density rate center list.

The availability of shared TELPAK was assumed to be as discussed under "MTS Shift to TELPAK," representing a decrease in the effective price of single channel private line.

Using the methodology summarized under "MTS Shift to TELPAK," an estimate was made of the amount of shift from WATS to private line that the effective private line price decrease would cause.

Stimulation was included in the same manner discussed under "MTS Shift to TELPAK."

\$7.7 million dollars was estimated as the loss of revenues from Outward Full Business Day WATS, as a result of which TELPAK gained \$5.3 million revenues, including stimulation. This represents a net revenue loss of \$2.4 million for this market segment.

Measured Time WATS Shift to Full Business Day WATS

The existing base of Outward Measured Time WATS traffic was used in this analysis.

It was assumed that middlemen would offer their own version of Measured Time WATS at a discount of 20 percent from Bell's current Measured Time rates whenever it would be profitable for them to do so by reselling Full Business Day WATS. It was further assumed that each of the resold Full Business Day WATS lines would replace seven Measured Time WATS lines which had carried approximately 176 hours of conversation per month.

Using the methodology described above, an estimate was made of the amount of shift the 20 percent discount might be expected to cause.

The resultant estimate shows revenues of \$9.4 million lost from Outward Measured Time WATS and revenues of \$3.3 million gained by Outward Full Business Day WATS. This represents a net revenue loss of \$6.1 million for this market segment.

Private Line Shift to TELPAK

This estimate is based upon the TELPAK sharing study made in connection with Docket No. 17457. That study showed that existing private line customers could reduce their communications expense by \$94 million annually if full TELPAK sharing were available at then current rates.

The \$94 million loss estimate was adjusted to today's volumes, using data from Bell's Monthly Report 1B. The result was an estimated net revenue loss of \$112 million.

SCC Shift to TELPAK

The reference market from F.C.C. Docket No. 19919 included considerable shifts from Bell services to SCC services. With shared TELPAK available as previously discussed under "MTS Shift to TELPAK," the effective Bell rate for private line services greater than 25 miles in length is generally lower than those used for the SCCs in the reference market. Therefore, all Bell services greater than 25 miles in length previously shown as lost to the SCCs were assumed to shift to Bell's shared TELPAK. This results in a net revenue gain of \$37.8 million by Bell.

Station Equipment

The existing base of station equipment was used as a starting point.

It was assumed that customers shifting from other Bell private line services into TELPAK would make no change in their equipment. It was further assumed that the equipment created by shifts to TELPAK from other than Bell private line service would take on the characteristics of the existing single-circuit private line market. Therefore, the equipment portion of that market was ratioed upward in proportion to the number of new service terminals created.

The resulting Bell net revenue gain was \$3.1 million.

Cost Studies

Costs were estimated by using the market data as an input to the costing programs "Private Line Incremental Annual Costs" (PLIAC) and "Incremental Network Costs" (INC). These programs and their operations have been fully described in previous dockets, including F.C.C. Docket No. 19919.*

The combined output of these programs shows an estimated cost increase to Bell of \$44.2 million if full resale and sharing were in effect for one year.

* See Bell Exhibits 6 and 14 in Docket No. 19919.

COMMENTS OF UNITED SYSTEM SERVICE, INC. ON BEHALF OF
MEMBER COMPANIES OF THE UNITED TELEPHONE SYSTEM

Pursuant to the Commission's "Notice of Inquiry and Proposed Rule Making" released July 5, 1974, in the captioned Docket, United System Service, Inc. (hereinafter referred to as "United") on behalf of the member companies of the United Telephone System* by its attorneys respectfully submits its Comments:

* The United Telephone System companies are: Blacktown Telephone Company, Capital City Telephone Company, Carolina Telephone and Telegraph Company, Florida Telephone Corporation, Gulf States-United Telephone Company, New Jersey Telephone Company, Palo Pinto Telephone Company, United Inter-Mountain Telephone Company, United Telephone Company of Arkansas, United Telephone Company of the Carolinas, Inc., United Telephone Company of Florida, United Telephone Company of Indiana, Inc., United Telephone Company of Iowa, United Telephone Company of Kansas, Inc., United Telephone Company of Michigan, United Telephone Company of Minnesota, United Telephone Company of Missouri, United Telephone Company of New Jersey, United Telephone Company of the Northwest, United Telephone Company of Ohio, United Telephone Company of Pennsylvania, and The United Telephone Company of the West.

The United Telephone System consists of twenty-two telephone companies, operating in twenty-one states, with over three million telephones in service. United Telephone System, in addition to furnishing local exchange service, also connects with other independent telephone companies and with the nationwide toll network of the Bell System. Toll calls may be made from any telephone in the United Telephone System to any telephone connected to the nationwide toll network in the United States. Toll settlement agreements between the companies concerned determine the division of revenues derived from such calls. Other telecommunication services, furnished in conjunction with other telephone companies, include, for example, facilities for private line service, data transmission, mobile radio telephone and wide area telephone service (WATS). In 1973 approximately 50% of the revenues received by United Telephone System companies came from toll calls, and the division of revenues was determined pursuant to toll settlement agreements with other telephone companies.

PRELIMINARY STATEMENT

The Commission, in this proceeding has requested comments on whether and under what conditions, subscribers of the various service offerings of communications common carriers should be allowed to resell such services to others or to participate with others in the sharing or joint use of such services.

Before commenting on the specific items of inquiry, we believe it essential that the terms "resale", "sharing" and "joint use" should be clearly defined. Furthermore, we believe there should be a discussion of these terms within the context of this inquiry.

Resale: For the purpose of this inquiry "resale" can be defined as the purchase of communication services, or the lease of facilities from a communications common carrier by a person and the subsequent sale of such services or the subletting of such facilities to other persons.

The most important question presented by the term "resale" is whether or not a person engaged in the "resale" of communication services falls within the definition of a "common carrier" as defined in Section 153(h) of the Communications Act of 1934, 47 U.S.C.A. § 153(h). The requirements for "common carrier" status as set forth in Frontier Broadcasting v. Collier, 24 FCC 251, 254, 16 RR 1005 (1958), are:

- (1) A holding out or offering to the public;
- (2) compensation received for the service, and
- (3) customer control over what intelligence is transmitted.

It is the position of United that any entity engaged in the resale of communication services or the subletting of communication facilities falls within the aforementioned requirements. Accordingly, such entities are common carriers and must obtain from the Commission appropriate authority pursuant to Section 214 of the Act, 47 U.S.C.A. § 214.

Sharing and Joint Use: For the purpose of this inquiry "sharing" and "joint use" may be considered as identical. "Sharing" can be defined as the cooperative use of a communication service by more than one person and where the costs of such service are allocated, on some basis, to the persons using such service. "Sharing" is a tariff classification and nothing more. As a tariff classification it is subject to the prohibitions against unjust and unreasonable discrimination as provided in Section 202(a) of the Act, 47 U.S.C.A. § 202(a).

ANSWERS TO ITEMS OF INQUIRY

United, hereinafter has answered seriatim each item of inquiry contained in the Commission's "Notice of Inquiry" which may directly affect, or appears applicable, to the United Telephone System Companies: *

Item "2. Would the public interest be served by a removal of all restrictions on resale of private line services? What would the effect thereof be on:

- a.
- b. The Communications Industry apart from AT&T and Western Union: How would removal of resale restrictions affect the viability of other carriers with their own lines of communication, the stimulation of research and development, the market for new equipment, the development of new carriers, the stimulation of the market for wire and radio communications?"

ANSWER: As discussed in the foregoing "Preliminary Statement" any form of "resale", as that term is defined, would constitute common carriage requiring an entity engaged in such activity to obtain a certificate of public convenience and necessity pursuant to Section 214 of the Act. Assuming arguendo that the Commission is considering a program of certifying entities engaged in resale, United strongly urges that before embarking upon such a program it carefully consider the impact it would have on existing markets and the carriers that serve such markets. In this regard United urges the Commission to initiate studies designed to determine the impact resale entities would have on Independent telephone companies and their subscribers.

* Items 1; 2a.; 2c.; 9 and 10 have not been answered by United since such items appear to be directed to, or applicable to, other common carriers.

Item "3. If a total removal of restrictions on resale is not desirable what specific restrictions are recommended? Fully justify any recommended restrictions and discuss in terms of the factors listed in question two.

Item 4. Consider restrictions on resale of other services of AT&T, Western Union and other carriers in the same manner as called for by questions one, two and three above."

ANSWER: For the reasons set forth in the "Preliminary Statement" and in the answer to Item 2 above, United believes that any person engaged in resale should first obtain Section 214 authority wherein any restrictions on that authority would be contained therein.

Item "5. What is the justification for limiting the sharing of private line services to, generally, voice grade and under services and for requiring those desiring to effectuate a sharing arrangement to have a communications need of their own?"

ANSWER: The primary justification for limiting the sharing of private line services to voice grade and under services is based on the engineering design of the exchange plant of telephone companies. Generally, exchange telephone plant is designed to provide basic voice grade service. Facilities utilizing frequencies above the basic voice grade range require special construction or conditioning not normally or usually provided when constructing exchange outside plant.

Item "6. Would the public interest be better served by removing all restrictions on the sharing of private line facilities? If that would not be desirable, recommend necessary or desirable restrictions and justify any recommendations taking into consideration the effect of each on the carriers, other elements of the communications industry and the using public."

ANSWER: The public interest would not be served by removing all restrictions on the sharing of private line facilities. Unrestricted sharing of private line services would, in the opinion of United, create many legal, operational and economic problems and in the long run may not be in the public interest. The removal of all restrictions on sharing presents a serious legal question under the discrimination provisions of Section 202(a) of the Act.

Economically, unrestricted sharing could have an adverse impact upon a common carrier's local exchange subscribers. This impact would result from the cross elasticity between private line services and the message toll services. If sharing of private line services offers the subscribers a lower rate, it is obvious that such subscribers will shift from message toll services to private line services. To the extent that unrestricted sharing renders private line services more attractive and thereby effects a shift in demand from message toll service, it will also redistribute revenue requirements from the toll to the local exchange services. Such a shift may not be in the public interest for the reason that it would place an unreasonable burden on the local service subscriber. It should be noted that the FCC is considering economic impact problems in Docket No. 20003. Accordingly, there should be no change in the sharing provisions until the issues in Docket No. 20003 are decided.

Item "7. What is the public need for sharing of private line facilities? Discuss any new technologies being developed which would make sharing more attractive, new user applications of sharing and the relationship between the need for sharing and the availability of facilities for resale. Specifically, what need for sharing would remain if all restrictions on the resale of private line facilities were eliminated?

Item 8. What is the need for sharing of other services of AT&T and Western Union as well as the services of any other communications common carrier?"

ANSWER: In instituting this proceeding the Commission has relied on the alleged severely limited opportunity for entities to obtain services from the established carriers to provide augmented communications services to the public despite the demonstrable rapidly growing market for non-voice communications as found to exist in the Specialized Common Carrier Case, 29 FCC 2d 870 (1971). In many instances throughout its Notice of Inquiry, the Commission refers to those wishing to offer an augmented communication service and the existence of new technology enabling them to do so. However, the services cited as precluding sharing, for example, MTS and WATS, are not those designed or used to provide the sophisticated, augmented non-voice services to which the Commission has reference. At best, they are designed to provide either voice grade services, or in the case of current private line services, a voice grade channel which in some instances can be multiplexed down to provide telegraph grade channels. Thus, with a few exceptions in the private line area, it would appear that the alleged public need for augmented non-voice communications services cannot be met by permitting the carte blanche sharing of all private line, MTS, and WATS services. Even the alleged need for the exotic specialized services envisioned by the Commission in Docket 18920 has either not materialized to date or such exotic services are just beginning to be provided, since heretofore these carriers have been providing services similar to those already in being.

It is, we believe, one thing to develop an augmented or improved service through the application of technology; it is quite another to permit rate discounts

on existing services when no technological advances or other reasons exist to justify such.

Furthermore, any determination or adoption of policy relative to sharing would run counter to the public interest if the economic consequences were not thoroughly assessed before any Commission policy is promulgated. To do otherwise, we submit, would do nothing more than to recreate the present interconnection morass. As the Commission is aware, in its Foreign Attachment decision, 15 FCC 2d 605 (1968), informal engineering and technical conferences were instituted to resolve questions presented by the tariff revisions filed in response to the Commission's Carterfone decision, 13 FCC 2d 420 (1968), but the economic effect -- be it good or bad -- of interconnection on the rate paying public and the existing carriers was not addressed and will not be addressed until at least some six years later within the confines of Docket 20003. To eliminate an after-the-fact approach, we strongly urge that before adopting any policy as a result of the instant proceeding, the Commission may wish to consider, for example, obtaining data as to the following:

- 1) Any market projections as to the demand or need for the sharing of private line services.
- 2) The projected diversion of MTS to shared private line services, assuming such is authorized.
- 3) The effect of the above on MTS rates and local subscriber rates.
- 4) The effect of the above on Independent company settlements.

Item "11.

Should the Commission regulate the sharing agreement made between customers and joint users and, if so, to what extent and in what manner? What reports should be required? Specifically consider possible guidelines governing the manner in which the cost of effectuating the sharing arrangement should be shared so that there is a clear distinction between sharing and resale?"

ANSWER: Assuming the foregoing question contemplates the continuation of currently effective tariff provisions which limit joint user and sharing arrangements, it would appear that these tariff provisions are adequate and additional Commission regulation is not required. On the other hand, if the Commission contemplates the broadening of these provisions, or otherwise liberalizing sharing or joint use of communication services, additional regulatory control may be required. However, it is the position of United that the type of regulatory control suggested by Section 93.4 of the Commission Rules and Regulations (47 C.F.R. § 93.4) or the Petition for Rule Making (RM 1997) filed by Microwave Communications, Inc. (MCI), would place such an administrative burden on the Commission that it is doubtful if it would permit effective regulation or control of such arrangements. Furthermore, it would place a substantial burden on the common carriers which would tend to increase the cost of providing sharing or joint use of services.

With respect to guidelines which would maintain the distinction between sharing and resale, United believes that one of the most significant guides is that in the case of sharing, each person should have a communication need of his own as well as paying no more than his allocated cost of the service.

Item "12.

How should the Commission regulate the entities reselling communications services and facilities? If in some instances full regulation would not be desirable, recommend the manner and extent to which regulation is desirable. Specifically consider the most desirable manner of rate regulation for the various types of resale entities. For such entities would the setting of rates on the basis of operating ratios rather than rate base-rate or return be more effective? What accounting system and financial reporting should be required? What regulation over commencement of operation, standards of service and termination of service is desirable?"

ANSWER: It is the position of United that any person engaged in providing communications by wire or radio, as those terms are defined in Section 153(a) and (b) of the Act, should first obtain from the Commission the appropriate certificate of public convenience and necessity as required by Section 214 of the Act. However, United does recognize that some carriers may be fully subject carriers while others may be only connecting carriers as defined in Section 152(b) (2) of the Act. For example, facsimile service would appear to fall within the definition of a wire communication as set forth in Section 153(a) of the Act. Therefore, any entity providing facsimile service is a communications common carrier. However, if the only function performed by a common carrier engaged in facsimile service is the provision of a facsimile transceiver and the remainder of the service is provided over the message toll network by other communications carriers, it may well be that such facsimile carrier would fall within the definition of a connecting carrier and subject only to the provisions of Sections 201 through 205 of the Act. On the other hand, a facsimile carrier who provides the transceiver and leases private lines from an

interstate carrier may very well be a fully subject carrier and required to comply with all the requirements of the Act.

Respectfully submitted,

UNITED SYSTEM SERVICE, INC.

December 11, 1974

COMMENTS OF
AMERICAN TRUCKING ASSOCIATIONS, INC.

American Trucking Associations, Inc., hereinafter "ATA",
by its attorneys, hereby responds to the Commission's Notice of
Inquiry and Proposed Rule Making, issued July 5, 1974, 47 FCC 2d 644.

I. INTRODUCTION

1. ATA is the national trade association of the trucking industry. Its membership, whose interests it represents, consists of individual state trucking associations and their members. The trucking industry is unique in that while it is one of the nation's largest industries, it is mostly composed of small local businessmen, many of whom depend for their revenues upon intrastate commerce while others perform solely interstate operations, some of them between points throughout the continental United States. ^{*/} ATA meets

^{*/} Preliminary 1972 figures compiled by ATA and published in American Trucking Trends 1973 show a total of 15,138 motor carriers, consisting of 1,771 Class I carriers (annual revenues of \$1,000,000.00 or more), 2,202 Class II carriers (annual revenues of \$300,000.00 to \$1,000,000.00) and 11,165 Class III carriers (annual revenues under \$300,000.00).

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the needs for multi-state regional as well as national information concerning highway safety, traffic exchange matters, state licensing and regulation, taxation and reciprocity, and other coordination data necessary to permit these thousands of trucking firms to perform the nation-wide tasks of a coordinated industry.*/

2. In 1945, ATA organized a corporation known as Highway Radio, Inc., which company hired competent communications personnel to study and advise ATA and its members concerning their communications needs. Highway Radio recommended a nation-wide private microwave communications system for ATA and member use and formally undertook the planning of an ATA Eastern Microwave System stretching from Boston to Miami and as far west as Memphis, Tennessee and Meridian, Mississippi. But these plans were not implemented. Instead, the trucking industry continued to rely on common carrier services with the emphasis being later placed on Shared TELPAK, while that service was available from the American Telephone and Telegraph Company, hereinafter referred to as "AT&T", "the Bell System", or "Bell".

3. With the demise of Shared TELPAK in December of 1971, the trucking industry found itself in a seriously disadvantaged position compared to the railroad and airline industries. Due to the

*/ The nation-wide scope of the trucking industry may be gleaned from Attachment A hereto, entitled "Industry at a Glance", a synopsis excerpted from the 1974 edition of American Trucking Trends published by ATA.

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historical and chronological development of the railroad and wire line communications industries, it is proper to characterize the still existing composite railroad industry communications system as the grandfather of the present day telephone industry. The railroads today possess as an accident of history, vast, industry-operated, communications systems which have been carefully and systematically fashioned to serve the needs of member carriers in the railroad industry, and through them to serve their customers. The structure of the railroad industry consists of a very small number of relatively large operating units, each of which practically can finance and operate and now possesses privately-owned or common carrier furnished communications facilities which are centrally controlled on a carrier, regional or national basis, and which provide to the railroad industry types of communications facilities and services uniquely suited to the needs of that industry. The railroad industry communications system also has long enjoyed cost, interconnection and administrative control advantages not available to motor carriers, who have relied to an overwhelming extent upon communications common carrier general public offerings to satisfy their communications needs. The competition for public carriage business which exists between railroads and for-hire motor carriers is certainly cost influenced.

4. The airline industry also is composed of a relatively small number of large carriers, compared to the trucking industry.

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These air carriers individually and through the vehicle of ARINC have been permitted to develop an integrated communications system specifically designed and centrally operated administratively best to serve the needs of the air transportation industry. The telephone industry has recognized the needs of the air transportation industry for a proper communications system tailored to the varied and various needs of that industry and has extended to ARINC the right centrally to order, control and operate administratively a nation-wide network of leased communications circuits to serve the industry needs on a satisfactory, operationally practical and inter-industry economically-competitive basis. The competition which exists between airlines and for-hire motor carriers also is certainly influenced by cost factors.

5. The trucking industry, unlike the railroad and airline industries, is made up of a vast number of local, regional and nation-wide transportation companies. While motor carriers, considered as an industry group, represent one of the largest industries in the United States, few if any operating units of the trucking industry have the financial or personnel resources to build their own communications systems, as railroads did. The airlines, of course, have always enjoyed the advantages of a nation-wide communication system through ARINC.

6. In 1955, a Communications Committee was appointed by, and is subject to the continuing control of the Executive Committee

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of ATA, its operational and administrative and planning group. This Communications Committee was charged with responsibility for developing and effectuating plans for adequate communications for and between ATA members, including appropriate use of both common carrier and private communications facilities. The Executive Committee took further action in 1967 and again in 1972 to restate and reinforce its charge of responsibility to the Communications Committee, authorizing it to undertake the creation and operation of a nation-wide trucking industry private communications system using both private microwave and common carrier leased facilities for the purpose, requiring, however, that the system should be practical and competitively realistic, on an inter-industry basis, as to administration, operation and costs.

8. During the time from February 1961 to December 1971 that shared TELPAK rates were available to the trucking industry, a Highway Carrier TELPAK Advisory Committee concentrated its efforts in the direction of assisting members to achieve communications system improvements through use of various TELPAK services. ATA chose not to make operational its planned nation-wide private microwave system for the threshold reason that members did not and do not have the technical personnel necessary to install or operate such a private microwave system.

9. ATA's Complaint against AT&T, Docket No. 19746, sought Commission assistance to secure for the trucking industry the right

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to be treated as a single customer by AT&T, as the airline industry is treated under tariffs. That proceeding was terminated by the Notice of Inquiry in this docket, the Commission announcing that the issues set for investigation in Docket 19746 would be considered in this inquiry.

II. RESPONSES TO COMMISSION'S ITEMS OF INQUIRY

- 1 -

What is the justification for the restrictions on resale and third party traffic in the currently effective private line service of AT&T and Western Union?

10. In a sense, this proceeding might be viewed as a basic proceeding to determine whether or not the telecommunication industry will permit specialized marketing functions to be performed. Our reference point must be the new nature of communications markets. There is virtually no way that the Bell System could possibly meet all new and developing specialized communications and communications related services, if the entire universe of such services is reserved for Bell. The exceptions to the current tariff restrictions -- both those exceptions that reflect price discrimination and those exceptions that attempt to allow specialized marketing to be performed in certain sub-markets -- simply result in a grossly discriminatory situation where Bell regulates entry to markets where communications related and value added services are provided. The pressures for continued exceptions and discrimination must continue to mount so

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long as the restrictions continue. The longer the FCC countenances this activity, the more serious the problem will become, and the more detrimental will be its impact upon the implementation of the FCC's specialized carrier decision which attempts to bring forth regulated competition in specialized facility markets as well as specialized service markets.

11. Insofar as the trucking industry is concerned, it would appear that its members would benefit in several ways from a removal of the existing arbitrary tariff restrictions on resale and third party traffic which favor one mode of transportation -- the airlines -- and disadvantage the trucking industry. First, the trucking industry is not now a member of the group obtaining the benefits of existing Bell pricing practices, although by definition it belongs to that group, namely, the transportation industry. Hence, the discrimination. Second, it would appear that the trucking industry, and hence the public, would gain much if the door for the creation of entities similar to ARINC were thrown open to that industry.

12. It is clear that AT&T and Western Union base their rates for use of their existing common carrier facilities upon the customer's use characteristics, not upon the carrier's dedicated plant. The same physical facility may be used by an AT&T customer for D. C. telegraph, voice, or multi-channel data transmission, but each use is charged at different rates. Similarly, though two or more AT&T

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customers may subscribe to communications uses capable of being accommodated on a single facility, each is charged for an individual service, not for a proration of the facility cost. It appears that the present unquestionable justification for retention of existing restrictions on resale and prohibition of third party traffic is the fact that the precipitous removal of such restrictions would require so drastic a realignment of all rates, that a very large number of communications users would be seriously disadvantaged in an unpredictable fashion. To recognize this fact of life is not to say that no changes should be made, but simply that so fundamental a change as abandonment of a cornerstone of the complex structure of utility rates should be changed gradually, as the philosophy underlying the rate structure is examined and modified.

13. In any system of trade, or even barter, the value to the purchaser of the thing being sold must be considered. In fact, the entire supply and demand underpinning of the free enterprise system is simply one facet of value bargaining. It has long been recognized that value of service is one important factor to be considered in fixing utility rates. Thus, business hour telephone rates are higher than nighttime rates, all business use rates are higher than social use rates, etc. The practice of telephone companies charging for service rather than for facilities is an application of the value of service concept of utility pricing and its continuation as a general practice is essential.

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14. To eliminate precipitously all restrictions on resale and on third party traffic on a blanket basis would be to eliminate the principle that telephone companies offer services, not facilities, and would require a complete reworking of all rates, shifting the burden of producing revenue drastically away from business oriented services onto social and residential services; this because it is primarily businessmen who would be able to take advantage of the new communication opportunities which would be created by elimination of these restrictions.

15. ATA believes it would be desirable to operate under a rate system which does not overcharge businessmen for their communications (calculated on a cost basis) and undercharge residential users, but ATA also recognizes that the principle of subsidizing services which are considered socially desirable is one which common carriers, regulators, legislators and the public have enjoyed throughout the entire history of the telephone industry, and is one which cannot practically be changed overnight. Instead, some limits should be placed upon the amount of subsidy businesses are required to provide, and relief should continue to be granted to particular business services on an individual basis, but more thoughtfully than has been the practice of the past.

16. It is clear that in order for AT&T to charge for service rather than for use of facilities, it must know of and control

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the use made of its facilities; and it could not do that if it did not retain "resale of service" and "third party usage" general prohibitions. However, the blanket restrictions, like the blanket interconnection restrictions struck down in Carterfone, cannot in fact be enforced universally by a public utility enjoying a monopoly on the provisions of telephone facilities, because to do so would suppress some communications uses reasonably required by certain customers. Thus, other telephone companies, including cooperatives, foreign and international common carriers, marine coast station operators, Western Union, railroads, pipelines, airlines, stock exchanges, related corporations and others have been exempted from time to time from the generally-applicable resale and third party use restrictions.

17. These exceptions, like the pre-Carterfone exceptions to the rule against interconnection of "foreign equipment" have been implemented in a number of ways. In some cases, AT&T has escaped being required to apply its tariff restrictions by making specific contracts with users or user groups. In some cases, AT&T has written exceptions into its tariffs. In some cases, Bell System companies have simply chosen not to enforce their tariff restrictions against certain known violators. The missing link in the procedures which have resulted in past user escape from the resale and third party use restrictions for some businesses, but not for others, is even-handed and demonstrable consideration of public interest.

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18. ATA does not believe it is either practical or desirable at this time completely to eliminate resale and third party restrictions, but believes that procedures for exemption from such restrictions for the benefit of certain limited user groups should be formalized, published as tariffs, and should be evenhandedly administered under regulatory supervision.

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Would the public interest be served by a removal of all restrictions on resale of private line services? What would the effect thereof be on:

(a) AT&T and Western Union?

19. An FCC order permitting immediate unlimited sharing of private line facilities at the user's option would have such a demonstrably unfavorable and unpredictable effect upon utility revenues that it is impractical and possibly unlawful. Such an order would have to be contested in the courts and in Congress as a life and death matter by the carriers, and would be an unrealistic approach to achievement of a practical solution to the serious public interest problems which the Commission has so fully exposed in its Notice of Inquiry. In the long run, unlimited sharing could be a viable alternative causing some problems to the telephone companies but at the same time result in some benefits to users. It would be necessary for the Commission to order or carry out detailed studies of present usage to assess quantitatively the effects of unlimited sharing on

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such factors as facilities fill and planning, traffic volumes, revenues and rate of returns for the company as a whole and by affected service or particular route. However, the following qualitative observations concerning these factors are offered for consideration in this inquiry.

a. Facilities fill and planning

The effect of unlimited sharing of private line service should be to cause much higher levels of fill of TELPAK services than at present. The basic economics involved and the effects of very limited sharing now allowed all mitigate against high levels of fill of TELPAK services on the average. To illustrate the first point, consider the number of circuits needed to justify shifting from Hi/Lo tariff to TELPAK services. For a 100 mile section, a TELPAK C service is more economical than Hi D (high density) Services for 25 or more circuits, and a TELPAK D service becomes more economical for 69 or more circuits (see Exhibit 1). This indicates that a TELPAK C service is more economical than Hi D service at a 25 percent fill ($\% \text{ fill} = \frac{25 \times 110}{60} = 25\%$) and a TELPAK D service is more economical at a 28 percent fill ($\% \text{ fill} = \frac{69 \times 100}{250} = 27.6\% \text{ } 28\%$).

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For this reason, users will shift to TELPAK at low levels of fill because it is more economical. Since sharing of TELPAK services is virtually prohibited except for a few large users, this causes several different users to occupy TELPAK services at low levels of fill over parallel and contiguous routes. For an example, Bell's data ^{*/} indicate that shared TELPAK services used by the trucking industry in 1967 had a median level of fill of 35 percent for TELPAK C and 56 percent for TELPAK D (see Exhibit 2). Unlimited sharing would allow these users to utilize TELPAK services at fills closer to the maximums. Since highly filled TELPAK services are considerably more economical than low filled ones, unlimited sharing would result in considerable savings to present and potential TELPAK users.

The effect of an order for immediate unlimited sharing of TELPAK upon Bell's planning should be negligible. There should be only a transient peak of unpredictable activity immediately following such an order and for the long term the effect should be negligible. A history will be built up with time as has been done

^{*/} Analysis of Truckers shared TELPAK C and D usage, AT&T October 1, 1967.

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under all other service offering conditions. This history will allow Bell and Western Union to make predictions for service and facilities under the new market conditions as accurately as it does now for any other of its services.

b. Traffic Volumes

There should be no immediate overall increase in traffic to either Bell or Western Union because of an order permitting immediate unlimited sharing. There would most likely be a shift in traffic among services. It would be expected that some traffic will shift from WATS and MTS to private line. This will cause an increase in private line traffic and a corresponding decrease in MTS and WATS traffic. Thus, the immediate effect upon overall traffic should be minimal. Because sharing of private line facilities will result in making private line services more economical to more users, the demand for more services over the long run should increase, and Bell's cost of providing these services should decrease. Therefore, the long term trend will be to increase private line traffic. This increase should occur in an orderly and gradual way which will allow Bell and Western Union to predict and plan for the necessary increase in facilities needed.

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c. Revenues

The effect of immediate unlimited sharing should tend to decrease Bell and Western Union revenues. This is due to the effect of fill in TELPAK services. The telephone companies have realized effectively multiple revenue on the unused portions of TELPAK services. If a user orders a TELPAK service and utilizes only 40 percent of it, he pays for the entire TELPAK while the telephone company only "equips" the 40 percent circuits used and the other 60 percent of the facilities paid for by the user are available for other user services. Unlimited sharing should cause TELPAK services to operate at a higher level of fill and hence more facilities will be required to serve a TELPAK service than at present and the result to the telephone companies will be lower revenue.

For example, Bell data show (see Exhibit 2) that the trucking industry was using 12,380 section miles of TELPAK C in 1967. These sections had a capacity of 742,800 equivalent voice channel miles. The data indicate that only 324,036 equivalent voice channel miles were utilized resulting in an average fill of 43.6 percent. Therefore, the facilities required for

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the 418,764 equivalent voice channel miles not utilized but paid for by the trucking industry were available to Bell to sell to other users. Increasing the fill of these TELPAK sections to 80 percent would have increased the equivalent voice channel miles utilized to 594,240 and left only 148,560 for resale by Bell. Hence, Bell's total revenues would have decreased under the latter conditions.

- (b) The communications industry apart from AT&T and Western Union?

20. ATA would view an FCC order permitting immediate unlimited sharing of private line facilities at the user's option as a false promise to other segments of the communications industry, encouraging investments of time and money in proposed sharing equipment and systems which may never be possible in the real world. The overreaction of the communications industry with respect to premature development and marketing of interconnection equipment is an example of the type of activity which would follow such an FCC order. Moreover, ATA believes that the elimination of all restrictions on sharing would be a much more real threat to common carrier revenues than was the Carterfone decision, and therefore probably would be resisted much more vigorously and even more successfully by the carriers. In particular, such a move would be impractical for the following reasons:

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21. The intent of the FCC order resulting from Docket 18920 which allowed the specialized common carriers (SCCs) to compete in the telecommunications industry was to allow the SCCs to compete in providing new and innovative services to the industry. While this is already the result in practice for one or two of the existing SCCs, the majority of these new carriers are still in their start-up phase and are competing in the traditional private line sector of the market.

22. These carriers are presently struggling to overcome the competitive effects of Bell's Hi/Lo tariff. The opening up of the private line market to unlimited sharing, particularly TELPAK, would represent another competitive blow that could cause the failure of some of these emerging companies.

23. While these companies have filed tariffs competitive with Bell's Hi/Lo tariff, none of them are competing in the lower rate bulk private line markets and probably could not at this stage of their development. Unlimited sharing will create conditions and rates which favor the shift of users from individual private line circuits to TELPAK. This shift will decrease the private line market to the SCCs and in effect make TELPAK more competitive with private line circuits. The result would be a double competitive blow to the SCCs at a very critical time in their development.

24. The effect upon value added carriers might be different, however. The ability of these carriers to join together in

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buying TELPAK services should greatly reduce the cost of transmission services to them. This would allow them to reduce the charges to their patrons and hence stimulate and expand their business markets, encouraging, in turn, more entrepreneurs to enter the market and offer services not previously available, benefiting the business community, including the transportation industry.

25. On balance, however, ATA believes that the overall effect of any order permitting unlimited sharing of private line services would be too damaging to be attempted at this time.

(c) Communications users?

26. It is ATA's view that an FCC order permitting immediate unlimited sharing of private line facilities at the user's option would serve to delay the solution of the urgent matters which the Commission has discussed in its Notice of Inquiry, by inviting all private line users into the arena where now only a limited number of contestants are battling for their points of view.

27. In summary, the ATA views immediate opening of private line services to unlimited sharing as impractical. The short run dislocations in telephone company facilities and revenues could cause unreasonable demands upon telephone company installation and maintenance resources and possible interruptions to other services. In the long run, removal of all restrictions or resale of private line services might be a viable alternative. However, the removal

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of restrictions on sharing should proceed in a controlled and orderly manner to prevent dislocations in the common carrier operations and inconvenience and inefficiencies to user services.

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If a total removal of restrictions on resale is not desirable, what specific restrictions are recommended?

28. Removal of the restrictions against resale and third party users for the benefit of certain identifiable and deserving additional user groups would be in the public interest. However, this removal of restrictions should proceed in a controlled, orderly fashion, and it is more realistic to discuss initial desirable exemptions to a continuing general restriction on resale than to discuss substitute restrictions. Such exemptions have traditionally been created effectively by AT&T by contract or by redefining single users. AT&T has defined certain user groups as single users and has negated resale provisions in Tariff No. 260 at 2.2.1, which paragraph ostensibly defines "Use". At this time, ATA recommends that the Commission should require the adoption of an underlying set of principles to guide the carriers in the rewriting of their "Use" definitions which would permit certain additional related user groups, including the motor carrier industry, to be recognized as a single customer to escape resale and third party use restrictions.

29. It is editorially convenient to note at this point that the device of defining a group as a single customer has the

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effect of merging the issues of resale, third party use, and joint users of both private line and other types of common carrier services, each of which the Commission in its Notice of Inquiry has treated separately. Philosophically, this appears to ATA to be the correct approach, because it is the user's characteristics, rather than the carrier's existing tariff structure, which should influence the Commission selectively to relax the tariff prohibitions here under discussion. Moreover, as has been explained above, an uncontrolled shift from present practice to simultaneous full and unlimited sharing for all users would be impractical and not in the public interest. Therefore, the remaining discussion contained in this section of these Comments will deal with the Commission's Items of Inquiry numbered 4 through 8.

30. A study of AT&T Tariff FCC No. 260, ¶ 2.2, is the starting point to develop a set of principles which should be incorporated into all AT&T and Western Union interstate tariffs as exceptions to the general prohibitions against resale of service or third party use. Incorporation of these principles as specific exceptions to the continuing prohibitions would represent a practical step towards elimination of discrimination and satisfaction of communication needs now being stifled. The recommended principles are:

*/ Normally, ATA would confine its recommendations to the area of immediate concern of the trucking industry. The recommendations herein relating to the areas outside this concern are made in response to the general scope of the Commission's inquiry herein.

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- a. Any Department or Agency of the United States Government which subscribes to services intended to be used exclusively for United States Government business, and to be paid for from the United States Treasury directly, shall not be considered to be in violation of the tariff prohibitions if it gives or sells the service to other United States Government Departments or Agencies.

This condition is not intended to differ in result from Tariff 260, 2.2.1.(D).

- b. Any Department or Agency of the Government of one of the states of the United States which subscribes to services intended to be used exclusively for state business, and to be paid for from the state treasury directly, shall not be considered to be in violation of the tariff prohibitions if it gives or sells the service to another Department or Agency of the same state.

This condition is intended to encompass and enlarge the single customer definition of 2.2.1.(I). In principle, there is no reason that a state government should be prevented by utility tariffs from conducting its business in the most cost-effective manner.

- c. ATA makes no comment with respect to the provisions of Section 2.2.1.(C) of AT&T's Tariff F.C.C. No. 260.

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- d. Any association of federal or state government regulated public utilities whose members must secure governmental business entry approval or certification as a prerequisite to lawful operation, which association performs industry-wide services for its members, which subscribes to services and which pays for the services from its operating funds, shall not be considered to be in violation of the tariff prohibitions if it gives or sells the service to its regulated and certificated members or their regional or subsidiary associations.

This condition is intended to encompass and enlarge the single customer definition of 2.2.1.(F) and (G), but is enlarged to include ground as well as air common carriers, and gas as well as electrical energy distribution control associations.

- e. Any customer which subscribes to services and pays for them from operating funds, shall not be considered to be in violation of the tariff prohibitions if it transmits to all stations simultaneously communications which relate directly to matters of common interest to authorized users who are in the same general line of business.

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This condition is not intended to differ in result from 2.2.1.(B).

- f. Any customer which subscribes to services and pays for them from operating funds, which customer offers to its customers or to the public a product or service which includes communications but also includes other or different functions than are included in the services furnished by the carrier, shall not be considered to be in violation of the tariff prohibitions if it sells its overall services consisting of a combination of its own functions and use of the carrier services.

This condition is intended to encompass and enlarge the single user definition of 2.2.1.(E) and (H). It would permit, for example, the type of operations discussed by the Commission under the heading "Value added" Proposals, at ¶¶ 6 and 7 of the Notice of Inquiry.

31. The broadening of the restrictions on resale and third party use to include the above categories are reasonable and in the public interest.

(a) Effect on AT&T and Western Union

32. The effect of including these categories upon the overall facilities fill of Bell and Western Union will be negligible

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since the facilities used by these entities represent a small portion of the total private line facilities in use. However, individual TELPAK services used by the entities within these categories will realize higher levels of fill than the TELPAK services now used by each of the entities separately. This should result in lower telecommunications costs to the users within these categories. It is not expected that the fill of these TELPAK services under sharing will differ greatly from those of the present large users. For example, the trucking industry under previous sharing arrangements in 1967 experienced a median level of fill of TELPAK C of 35 percent and of TELPAK D of 56 percent (see Exhibit 2). It would be expected that changes in the industry since 1967 may modify these numbers somewhat but in general this should be indicative of the levels of fill to be expected. This indicates that the levels of fill of TELPAK services to be expected by these three categories of participants will not differ significantly from other large users or user groups.

33. While traffic volumes may increase somewhat within the user groups included in these categories, the overall effect will be negligible since the characteristics of the final traffic load should not differ significantly from other large users now being served.

34. Revenues will decrease somewhat within the services

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used by these categories because of the economies effected due to sharing. However, since the telecommunications services to these users will be more economical, the tendency will be for them to increase their volume of services, and therefore compensate for the reduction in revenue due to sharing. The result should be no net loss of revenue to Bell or Western Union. There should, therefore, be no change in the rate of return for the company as a whole or for the affected service.

(b) Effect on the communications industry
apart from AT&T and Western Union?

35. The effect on the specialized common carriers (SCCs) should be negligible. The portion of the total private line market represented by the services used by these three categories is small. The number of private line services now used within these categories that will shift to TELPAK is even smaller. Therefore, the effect of these shifts will represent only a minor perturbation of the private line market and should not significantly affect the specialized common carriers.

(c) Effect on communications users

36. TELPAK sharing in itself will result in lower costs to users sharing these services and directly encourage more use of communications in business operations, thereby increasing the efficiency of operations and allowing more and better services to the public. For instance, more use of and better communications in the trucking industry

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may be instrumental in lowering costs to shippers by helping to eliminate empty backhaul, providing the ability to route shipments direct to the destination and allowing quick and efficient tracing of shipments, thereby preventing costly delays. This will result in lower prices to the individual motor carriers with concomitant savings to them and to the public.

37. Better communications management to the trucking industry will result since the granting of single customer status to the trucking industry will permit ATA to act as a central communications manager for the trucking industry. This will tend to reduce fragmented and scattered management by the individual trucking companies that is now necessary and, in turn, improve communications management efficiency and effectiveness, thereby improving existing services and, possibly, facilitating the offering to new services at lower costs. Better communications management will allow the trucking industry to optimize its operations, select the most efficient carrier for specific services, lower costs to shippers, and offer better services to shippers and to the public.

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What is the justification for provisions of Section 2.2.1. of AT&T's Tariff FCC No. 260 and Western Union's Tariff No. 254 which accord special tariff treatment to the airlines, corporate conglomerates, stock exchanges and their members, and others? Do such provisions violate Section 202(a) of the Communications Act?

38. The justification for certain exceptions to general restrictions against resale and third party use of telephone and telegraph services is the fact that blanket and unyielding restrictions would be unreasonable and contrary to public interest, since communications common carriers are given monopoly franchises and others are prevented from freely instituting new services needed by the public which the common carriers have neglected to provide. If absolutely no exceptions to resale and third party use were permitted, government and commercial operations would be stifled until common carriers were ready, willing and able reasonably to meet each new communication need. Some types of needed communications networks would be administratively impossible to operate, if it were not for the exceptions created in AT&T Tariff FCC No. 260. Most obviously they include many networks consisting of receiving-only drops, and those needed for inter-agency government business. However, the tariff provisions, as now constituted, are unreasonably discriminatory in that they favor airline operations over trucking operations, and so forth. The discrimination between the airline operations and the trucking operations is particularly unreasonable and not in the public interest. Both the airlines and the trucking industry are members of the

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transportation industry and therefore both should be accorded equal treatment under the Tariffs. The airlines compete directly with the trucking industry in transporting materials and merchandise; and the bus industry in transporting passengers. The efficiency of any transportation company depends heavily upon the use of telecommunications service for scheduling, controlling and monitoring of its operations. Those transportation companies which have an advantage in telecommunications costs have a corresponding advantage in efficiency and costs of service. This is precisely the situation that now exists between the airline industry and the trucking industry, i.e., the airline industry has a definite advantage over the trucking industry in the cost of telecommunication service under the present tariff regulations. And this is so despite the unique and pervasive dependence of our economy on motor carrier-transportation, best reflected perhaps in the motto: "If you got it, a truck brought it." Yet, while this truth is universally recognized, it is denied in the present AT&T single customer tariff.

39. That the motor carriers and airlines vigorously compete for freight, with the latter increasing its share of the market at a faster pace than the former, is apparent from Exhibit 3, attached hereto. Due to the ability of the airlines to move freight quickly -- the ability assisted by the ease of controlling and scheduling deliveries through the use of telecommunications -- they are able not only dramatically to increase their share of the ton miles handled but also to bid for the types of freight which command higher rates. The availability

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to the trucking industry of cheaper and hence more telecommunications services, under tariff regulations and rates comparable to those accorded the airlines, should enable the trucking industry to compete fairly against the airlines for high value freight. The arbitrary and discriminatory tariff provisions which give undue advantage in terms of telecommunications costs to the airlines over the trucking industry are a contributing factor in causing an artificial shift of high value freight from the trucking industry to the airline industry.

40. A measure of the discriminating impact of the present tariff regulations upon the trucking industry is the additional charges incurred for private line services under the Hi/Lo private line rates compared to charges for the same services that would be incurred under Telpak, Series 5000 tariff charges. These additional charges represent a tax upon the trucking industry and represent unjust and unreasonable discrimination which confers upon the airlines and unfair advantage over the trucking industry.

41. The results of calculations of the additional charges under present tariff regulations compared to charges under Telpak rates for the trucking industry were it to enjoy single customer status under the tariff show that the penalty of the higher rates is severe. These calculations (see Exhibit 4) show that the \$26,400,000.00 per year^{*/} spent for private line services by the large trucking companies (those

*/ Data furnished by AT&T to the ATA based on charges for the month of August 1974.

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incurring monthly charges of \$5,000.00 or more) would drop to \$15,000,000.00 per year under Telpak rates if the trucking companies had single customer status. This represents yearly savings to the large trucking companies of \$11,400,000.00 or 43 percent of the present yearly expenditures.

42. The \$26,400,000.00 yearly cost for private line services to the large truckers does not include (a) private line services of the smaller trucking companies, (b) WATS services, (c) MTS services incurred by the truckers. A conservative estimate of the charges for these additional services is \$26,000,000.00 (see Exhibit 4). Assuming that one half of these services would shift to Telpak under single customer status, an estimate of the yearly expenditures for the private line services for the trucking industry under the present Hi/Lo tariff rates is \$40,000,000.00. With single customer status the same services would cost \$23,000,000.00 per year under Telpak rates. This represents yearly savings to the trucking industry of \$17,000,000.00 (\$40,000,000.00 - \$23,000,000.00), or 74 percent ($\$17,000,000.00 \times 100 \div \$23,000,000.00$) of the total estimated yearly private line charges that would be incurred under Telpak rates. Thus, the trucking industry could use 74 percent more telecommunications services for the same charges that are incurred under Hi/Lo rates at the present time. For example, it could add 1,742,195 more equivalent voice channel miles (see Exhibit 4) than it uses at the present, which represents 39,037 miles of Telpak C or 6,969 miles of Telpak D. This is enough Telpak C to cross the United States almost 10 times and enough Telpak D to cross it 2.3 times.

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43. These savings would permit the trucking industry to develop sophisticated communications/information systems to coordinate and control its operations. Systems to handle dispatching, administration, billing, safety, schedule, and shipment routing and tracing which are economical enough to use would allow the entire trucking industry, small as well as large companies, further to increase the efficiency of its operations, while also enhancing its ability to compete fairly with the airlines for freight shipments. The resulting greater productivity could lower the per unit cost of operation, which would benefit the shippers and hence the public at large.

44. In summary, the tariff regulations of Bell and Western Union which permit joint use of private line facilities by the airline segment of the transportation industry treated as a single customer and deny this benefit to the motor carrier segment of the same industry are unreasonable and contrary to the public interests. This essentially puts a telecommunications tax on the motor carrier segment of the transportation industry which has to compete against the airline segment of the same industry exempt from that tax. This practice constitutes unreasonable preference and advantage to the latter group within the meaning of Section 202(a) of the Communications Act. It is necessary, therefore, to enlarge the present exemptions from resale and third party use restrictions to include in each case limited categories of users, as suggested herein, rather than specific single customer groups to eliminate the existing and avoid further unreasonable discrimination.

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Should the provisions under consideration in question 9 be found to involve unlawful discrimination, what action should the Commission take to remove such unlawfulness?

45. As indicated above, the exclusion of the land transportation branch of the transportation industry from the benefits derived from the single customer status under the tariffs in question, while these benefits are available to the air transportation branch of that industry, constitutes an unlawful discrimination. Other examples of such discrimination in favor of one segment of a group, all members of which should be treated alike, are set out in ¶ 23, supra. This unlawfulness should be removed by including within the definition of "single customer" the presently excluded categories in accordance with the principles spelled out in ¶ 23, supra. Insofar as the trucking industry's interests are concerned, the categories of user groups considered to be single customers to escape resale and third party use restrictions, should include associations of public utilities regulated by federal or state governments where the association members, e.g., in the transportation utility field, motor carriers, buses, airlines, and railroads, must first obtain a governmental permit as a condition of engaging in the transportation business. Such associations would, of course, include the American Trucking Associations, Inc., as well as the National Association of Motor Bus Owners ("NAMBO"), the Associations of American

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Railroads, the Air Transport Association of America and Aeronautical Radio, Inc. */

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Should the Commission regulate the sharing agreement made between customer and joint users?

46. It is apparent that the Commission has jurisdiction to regulate value added carriers and associations rendering communications services to their members, and it also appears to ATA that a minimal-control type of Commission regulation would be proper. Qualification for inclusion in such special groups of persons exempted from resale and third party use restrictions should be controlled by the Commission in the public interest. It would be ATA's suggestion that this certification procedure could be a simple registration or licensing function, carried out on a routine basis by a certification bureau acting on written applications, similar in concept to transmitter licensing or issuance of equipment type certification. By such procedures the Commission could monitor and control the degree to which the suggested new liberalization policies actually affected common carrier revenues. ATA does not

*/ The principles suggested in ¶ 23, supra, include value added carriers, i.e., carriers offering communications services to the public which are not available from AT&T. Such organizations which, by adding service functions to a transmission of intelligence, perform useful and otherwise unavailable services for the public or a portion thereof, should include associations, such as ATA, if they chose to qualify as value added carriers.

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believe that annual reports from such certificated groups should be required, but suggests that certified groups might be required to report each five years, and that the extent of operations being conducted might be required to be revealed in each such report.

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How should the Commission regulate the entities
reselling communications services and facilities?

47. The public interest theory of regulation of public utilities, as understood by ATA, proceeds on the basis of the following reasoning: (1) entry of new suppliers into an essential public service business should be controlled to prevent unrestrained competition from undermining the viability of the industry, thus destroying the vehicle which furnishes an essential public service; and (2) the prices of a supplier of an essential public service should be regulated to provide just, reasonable and non-discriminatory pricing for a service which cannot be dispensed with or secured elsewhere. ATA's recommendations contain provisions for entry monitoring and control. Over a period of time the Commission would develop in its own records the information necessary to support future decisions to continue the registration type control or extend it to something more stringent. It is ATA's recommendation, therefore, that the initial regulation program be limited to the Commission's monitoring of the qualifications of new entities permitted to be classified as single customers.

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SUMMARY

48. In summary, it is ATA's position that:

- (a) Total elimination of resale and third party use restrictions would undermine the entire AT&T rate structure, would shift revenue burdens unfavorably, and is neither desirable nor practical either in private line or message services.
- (b) Some exceptions to resale and third party use restrictions are reasonable, necessary, and lawful and they should be retained and expanded.
- (c) Joint communications networks of tax supported governmental entities, coordinating organizations in the energy and transportation public utility industries, and value added carriers which would provide worthwhile communications services to the public not already provided by AT&T should be exempted from the tariff provisions which prohibit resale or third party use, through device of defining such related, common-interest public or public utility groups and value added carriers as "single customers."

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- (d) New properly qualified groups as defined hereinabove should be admitted to the "single customer" category under Commission supervision.

Respectfully submitted,

American Trucking Associations, Inc.

Dated: December 11, 1974

Industry at a Glance

(1974)

1. Total truck registrations in the United States for 1973 were 22 million. More than three million were new truck registrations, an all time high.
2. Total truck intercity ton-miles reached an estimated 505 billion in 1972. This was more than 22 percent of the total ton-miles produced by all modes of intercity freight transportation.
3. There were 15,144 Class I, II and III motor carriers in the United States in 1973.
4. Class I, II and III motor carriers earned an estimated \$21 billion in revenue or 55 percent of the total regulated freight transportation revenues in 1973.
5. Truck vehicle miles were an estimated 270,336 million miles in 1973.
6. Class I intercity carriers increased their mileage to an all-time high of 68,355 per power unit in 1972.
7. Total operating expense for all Class I and II carriers required 95.2 cents out of every dollar in 1973. This left only 4.8 cents from that same dollar to pay interest, income taxes, and dividends.

Source: Excerpts from the synopsis published in the 1974 Edition of American Trucking Trends, American Trucking Assns., Inc.

EXHIBIT 1

Breakeven point of Hi/Lo services vs. Telpak services:

Example:

Service Terminals		Telpak C or D		Service Terminals	
Station Term	Channel Term	High D Circuit	Channel Term	Station Term	

- A. Telpak C Let N = number of circuits
 (a) Telpak C costs = $2 \times \$40N + \$30 \times \text{mileage}$
 (b) Hi D Costs = $(2 \times 60 + 0.85 \times \text{mileage}) N$

Then the breakeven point of Hi/Lo versus Telpak C is where the cost of Hi/Lo circuits equal the cost of the same number of circuits on Telpak.

$$\therefore (2 \times \$60 + \$0.85 \times \text{mileage}) N = 2 \times \$40 \times N + \$30 \times \text{mileage}$$

or $N = \frac{\$30 \times \text{mileage}}{\$40 + \$0.85 \text{ mileage}}$

For a 100 mile circuit the breakeven point is:

$$N (100 \text{ miles}) = \frac{\$3000}{\$40 + \$85} = 24 \text{ circuits}$$

Therefore it becomes economical to use Telpak C for 25 or more circuits.

B. Telpak D

Telpak D costs per ckt = $2 \times \$40 N + \$35 \times \text{mileage}$

Hi D costs = $(2 \times \$60 + \$0.85 \times \text{mileage}) N$

$$\therefore N = \frac{\$85 \times \text{mileage}}{\$40 + \$0.85 \times \text{mileage}}$$

For a 100 mile section:

$$N (100) = \frac{\$8500}{\$40 + \$85} = 68 \text{ circuits}$$

EXHIBIT 2

CUMULATIVE DISTRIBUTION OF PERCENT FILL OF ALL TELPAK SECTIONS USED IN TRUCKERS SHARED TELPAK SERVICES

SOURCE: ANALYSIS OF TRUCKERS SHARED
TELPAK C & D USAGE BY AT&T
DATED OCTOBER 1, 1967.

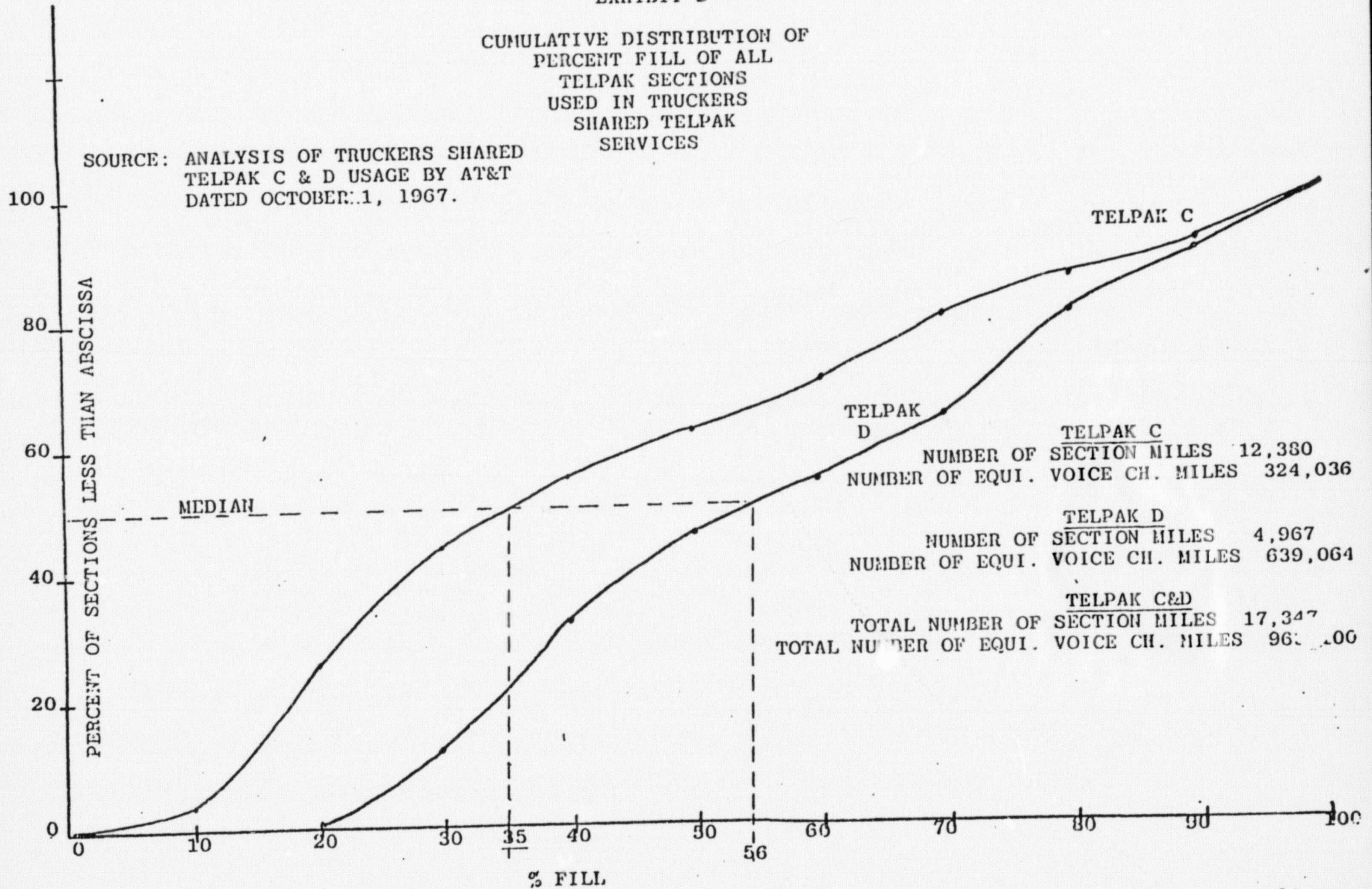


EXHIBIT 3

	MOTOR CARRIERS (Class I, II, III)				RAILROADS (Freight)				AIRWAYS (Freight)			
	<u>TON-MILES</u>	<u>INDEX</u>	<u>REVENUES</u>	<u>INDEX</u>	<u>TON-MILES</u>	<u>INDEX</u>	<u>REVENUES</u>	<u>INDEX</u>	<u>TON-MILES</u>	<u>INDEX</u>	<u>REVENUE</u>	<u>INDEX</u>
	(000,000)		\$(000)		(000,000)		\$(000)		(000,000)		\$(000)	
1958	84,339	100.0	\$ 6,131,217	100.0	558,738	100.0	\$ 8,411,737	100.0	579	100.0	\$225,812	100.0
1963	170,566	142.9	\$ 8,548,257	139.4	629,337	112.6	\$ 8,507,630	101.1	1,296	223.8	\$371,384	164.4
1968	155,400	184.2	\$12,655,351	206.4	756,800	135.4	\$10,247,197	121.8	2,916	503.6	\$615,127	272.4
1970	170,000	201.5	\$14,584,800	237.8	771,012	137.9	\$11,371,563	135.1	3,295	569.0	\$688,070	304.7
1973	212,000	251.3	\$21,000,000	342.5	860,000	153.9	\$14,222,600	169.0	4,200	725.3	\$880,900	390.1

SOURCE:

ICC, ATA, AAR, ATA of A

EXHIBIT 4An Analysis of Telecommunication Costs
in the Trucking Industry1. Purpose:

The purpose of this analysis is to estimate the difference in the cost of telecommunications services used by the trucking industry under Telpak tariff rates as compared with Hi/Lo tariff rates. This cost comparison gives a measure of the cost to the trucking industry of not having joint user privileges as a single customer under Section 2.2.1 of AT&T 's Tariff F.C.C. No. 260 and Western Union's Tariff F.C.C. No. 254.

2. Rationale of the Analysis

The approach taken in this analysis is to calculate the charges at Telpak rates and at Hi/Lo rates for two network sections. One network section is similar in characteristics to a high traffic section of the Telpak network¹ in use by the trucking industry in 1968, while the second network section is similar in characteristics to a low traffic section of that network. For each network section, a ratio of charges under Hi/Lo rates to charges under Telpak rates was computed. A weighted average of these ratios was computed to get an estimate of the ratio of charges under the two tariff rates for the network as a whole. This weighted average ratio was applied to

1. A map entitled "Centralized Shared Highway Carrier Telpaks", dated May, 1968.

the 1974 revenues for private line services used by the large trucking companies (companies with monthly private line charges of \$5,000 or more) and to projected private line revenues under joint use conditions to compute the industry cost differences under the two tariff conditions.

3. The Network Section Description

The network sections used in the analysis are shown in Figures 1 and 5. Figure 1 represents a high tariff section of a Telpak network and is similar in characteristics to what was in use by the trucking industry in 1968 between New York and Philadelphia. The network section consists of a Series 5800 or Telpak D on the main route and a 5700 or C Telpak on each of the two branching subsections. Cities A, C, F, H, and I are high density rate centers while the others are low density rate centers. Figure 2 shows the voice circuit channelization and Figure 3 shows the teletype channelization. Figure 4 shows the per cent fill of each subsection which results in an average fill for the network section of 54.5%. This compares with an average for all D Telpak sections ² used by the truckers in 1967 of 57%.

Figure 5 represents a low traffic section of a Telpak

2. "Analysis of Truckers Shared Telpak C & D Usage", page 139, AT&T, October 1, 1967.

network and is similar in characteristics to what was in use by the trucking industry in 1968 between Oklahoma City and Kansas City. The network circuits of 5700 or C TELPAK everywhere with two C TELPAKS between cities A and E. Cities A,B,C,E and F are high density rate centers and City D is a low density rate center. Figure 6 shows the channelization for this network section while Figure 7 shows the per cent fill. The average per cent fill is 78.2% which compares with 43.3% average fill³ of all TELPAK C sections used by the trucking industry in 1967. This higher level of fill is used because it was felt that should a new network be used that it would be centrally managed instead of individually managed as was done in 1967. Central management and planning would tend to fill the sections in a more optimum way.

4. Results of the Analysis

The results of the revenue calculations were as follows:

A) High Traffic Network Section

- (1) Revenue using Hi/Lo rates = \$47,385 per month
IXC = \$20,646 per month, Service Terminals = \$26,739 per month.
- (2) Revenue using TELPAK rates = \$24,467 per month
IXC = \$10,355 per month, Service Terminals = \$14,072 per month.

-3-

$$(3) \text{ Ratio of } \frac{\text{Hi/Lo Revenue}}{\text{TELPAK Revenue}} = \frac{\$47,385}{\$24,467} = 1.94$$

B) Low Traffic Network Section

(1) Revenue using Hi/Lo rates = \$34,485 per month.
IXC = \$21,400 per month, Service Terminals = \$13,085 per month.

(2) Revenue using TELPAK rates = \$24,800 per month.
IXC = \$15,600 per month, Service Terminals = \$9,200 per month.

$$(3) \text{ Ratio of } \frac{\text{Hi/Lo Revenue}}{\text{TELPAK Revenue}} = \frac{\$34,485}{\$24,800} = 1.39$$

C) Derivation of Weighted Average Ratio Hi/Lo Revenue to TELPAK Revenue.

(1) Total TELPAK C Equivalent channel = 324,036 miles³
used in 1967.

(2) Total TELPAK D Equivalent channel = 639,064 miles²
used in 1967.

(3) Total TELPAK C and D Equivalent = 963,100 channel⁴
miles used in 1967.

$$(4) \text{ Fraction of TELPAK C} = \frac{324,036}{963,100} = 0.336$$

$$(5) \text{ Fraction of TELPAK D} = \frac{639,064}{963,100} = 0.664$$

(6) Weighted Average ratio of Hi/Lo Revenue to TELPAK Revenues.

$$\text{Weighted Average} = 0.336 \times 1.39 + 0.664 \times 1.94 = 0.467 + 1.288 = 1.76$$

D) Savings on present private line Costs used by the trucking Industry.

- (1) Private line costs⁵ = \$2,200,000 per month
- (2) Yearly Cost = \$2,200,000 x 12 = \$26,400,000 per year
- (3) Yearly Cost with Joint use = $\frac{\$26,400,000}{1.76} = \$15,000,000$
per year.
- (4) Yearly savings with Joint use = \$26,400,000 -
\$15,000,000 = \$11,400,000
- (5) Per cent savings = $\frac{\$11,400,000}{\$26,400,000} \times 100 = 43\%$ per year

E) Savings on projected private line costs used by the entire trucking industry under joint user conditions.

- (1) Assume that WATS, MTS and private line revenues used by trucking companies with under \$5,000 per month is \$26,000,000 per year.
- (2) Assume that one half of this \$26,000,000 per year would shift to TELPAK under joint user conditions or \$13,000,000 per year additional will shift to TELPAK.
- (3) Therefore the total private line Hi/Lo revenue of the trucking industry under joint user conditions would be \$26,400,000 + \$13,000,000 = \$39,400,000 per year, say \$40,000,000 per year.
- (4) Using TELPAK rates the cost would be = $\frac{\$40,000,000}{1.76} =$
\$22,727,273 per year, say \$23,000,000 per year.

- (5) Therefore the savings to the trucking industry under joint user conditions would be:

$$\$40,000,000 - \$23,000,000 = \$17,000,000 \text{ per year}$$

$$(6) \text{ Per cent savings} = \frac{\$17,000,000 \times 100}{\$40,000,000} = 42.5\% \text{ Say } 43\%$$

- (7) Estimate of additional Services

$$\begin{array}{l} \text{Per cent of savings to projected} = \frac{\$17,000,000 \times 100}{\$23,000,000} = \\ \text{private line costs} \quad \quad \quad 73.9\% \text{ say } 74\% \end{array}$$

Therefore, the trucking industry can realize 74% more services under joint user conditions at the same cost as at present.

- F) Additional Services that could be obtained with the savings under joint user conditions.

$$(1) \text{ Total extra savings} = \$17,000,000 \text{ per year}$$

$$(2) \text{ Capacity cost of TELPAK C per equivalent channel mile} \\ = \frac{\$30 \text{ per mile}}{60 \text{ channels}} = \$0.50 \text{ per channel mile}$$

$$(3) \text{ Cost of TELPAK D equivalent} = \frac{\$85/\text{mile}}{250 \text{ channels}} = \$0.34 \text{ per voice channel miles.}$$

$$\begin{array}{l} \text{Weighted average from C (4)} = 0.336 \times \$0.50 + 0.664 \times \\ \$0.34 = \end{array}$$

\$0.39 average per channel mile for TELPAK C and D channels.

- (4) High Traffic Network
From A above:

$$\begin{aligned} \text{Ratio of } \frac{\text{Service Terminal Revenue}}{\text{Interexchange Revenue}} &= \frac{\$26,739}{\$20,646} = 1.29 \text{ (Hi/Lc)} \\ &= \frac{\$14,072}{\$10,355} = 1.36 \text{ (TELPA)} \end{aligned}$$

$$\text{Average Ratio} = 1.33$$

- (5) Weighted average of terminal to IXC:
From: C(4) and(5) and F(4) and(5):

$$\begin{aligned} \text{Weighted average } \frac{\text{Terminal}}{\text{IXC}} &= 0.336 \times 0.60 + 0.664 \times 1.33 \\ &= 1.085 \end{aligned}$$

$$\text{Therefore average Service Terminal charges} = 1.085$$

IXC charges

$$\begin{aligned} \text{Total charges} &= \text{IXC charges} + \text{Service Terminal Charges} \\ &= \text{IXC charges} + 1.035 \text{ IXC charges} \\ &= 2.085 \text{ IXC charges} \end{aligned}$$

- (6) Estimate of total channel miles that could be added due to projected network savings.

$$\begin{aligned} \text{Total savings} &= \$17,000,000 \text{ from E(4).} \\ \text{From F(5):} \end{aligned}$$

$$\begin{aligned} \text{IXC savings} &= \frac{\$17,000,000}{2.085} = \$8,153,477 \text{ per year} \\ &= \$679,456 \text{ per month} \end{aligned}$$

From this and F(3):

$$\begin{aligned} \text{Total channel miles that} &= \frac{\$679,456}{\$0.39} = 1,742,195 \text{ equivalent} \\ \text{could be added under} & \text{ voice channel mile} \\ \text{joint user status of} & \\ \text{trucking industry} & \end{aligned}$$

$$\text{This represents } \frac{1,742,195}{60} = 29,037 \text{ miles of TELPAK C}$$

or

$$\frac{1,742,195}{250} = 6,969 \text{ miles of TELPAK D}$$

5. Summary of Results

- A. The revenue for the high traffic network section:

From Hi/Lo rates = \$47,385 per month.

From TELPAK rates = \$24,467 per month.

$$\text{Ratio of } \frac{\text{Hi/Lo Revenue}}{\text{TELPAK Revenue}} = 1.94$$

- B. The revenue for the low traffic network section:

From Hi/Lo rates = \$34,485 per month.

From TELPAK rates = \$24,800 per month.

$$\text{Ratio of } \frac{\text{Hi/Lo Revenue}}{\text{TELPAK Revenue}} = 1.39$$

- C. Weighted average Ratio
- $\frac{\text{Hi/Lo Revenue}}{\text{TELPAK Revenue}} = 1.76$

- D. Savings on present private line costs used by the trucking industry under joint user conditions:

Persent private line revenue (Large truckers) = \$26,400,000
per year.

Savings = \$11,400,000 per year.

Per cent savings = 43% per year.

- E. Savings on projected private line costs by the trucking industry under joint user conditions.

Projected private line revenues = \$40,000,000 per year

Savings = \$17,000,000 per year.

Per cent savings = 43% per year.

Per cent additional services = 74% per year
possible due to savings.

F. Additional services that could be obtained with the savings under joint user conditions.

Additional Equivalent Voice = 1,742,195
channel miles

or

Additional Telpak C miles = 29,037

or

Additional Telpak D miles = 6,969

6. Conclusions

It is concluded that the trucking industry could realize considerable savings in telecommunications costs under conditions of joint user single customer status. These savings amount to \$11,400,000 per year or 43% of the present private line costs to trucking companies using over \$5,000 per month in services. It is estimated that of the order of \$17,000,000 per year or 43% of the potential total trucking industry private line costs could be saved by these tariff changes. These savings could accrue to adding 1,742,195 equivalent voice channel miles to the trucking industry network at the same cost as for the present level of services under the Hi/Lo tariff. This represents 29,037 additional miles of Telpak C or 6,969 miles of Telpak D.

FIGURE 1

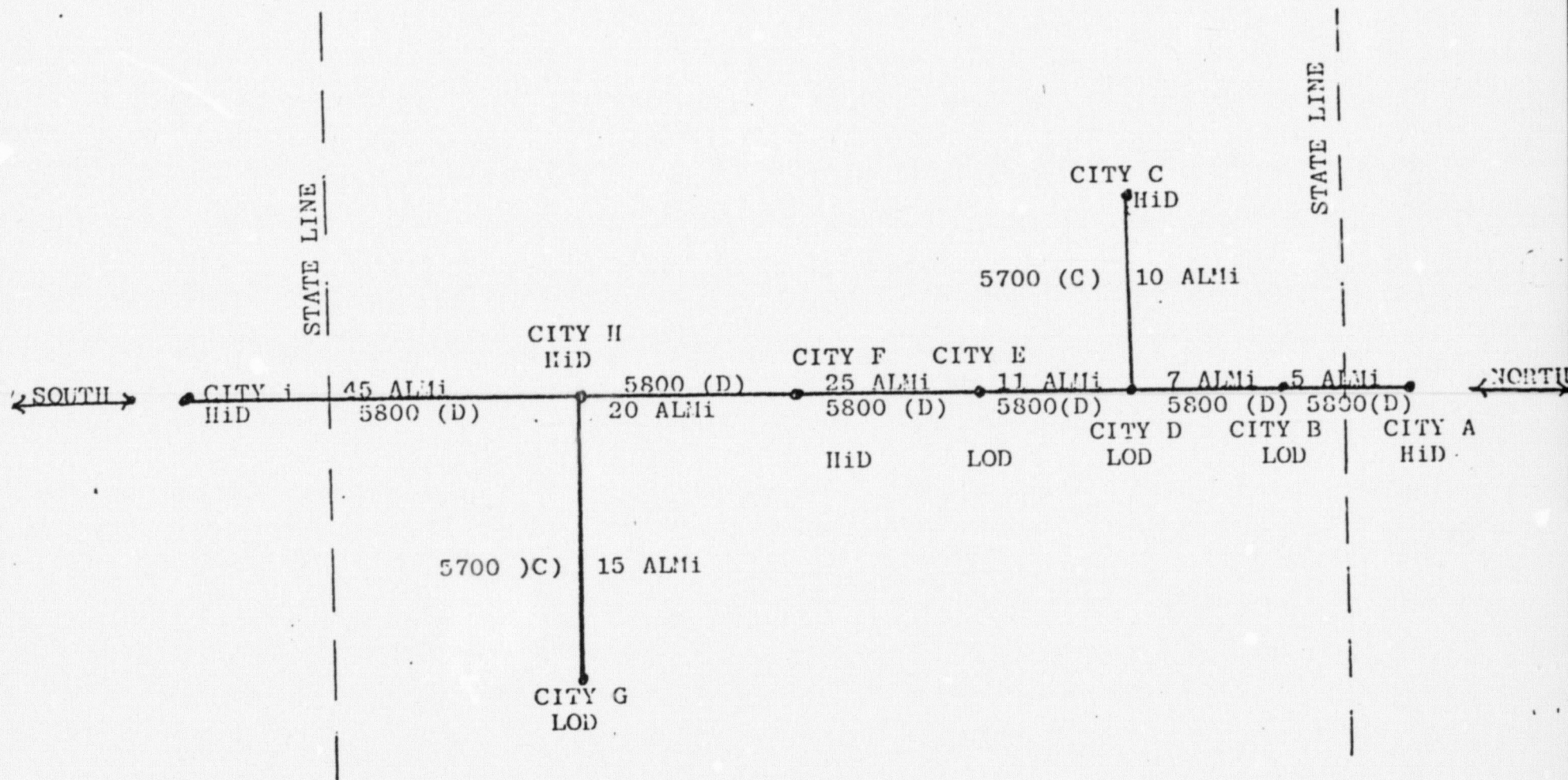


FIGURE 2
HIGH TRAFFIC NETWORK
CHANNEL DISTRIBUTION
VOICE CHANNELS

CITY	NORTH	A	B	C	D	E	F	G	H	i	SOUTH	TOTAL
NORTH	0	0	0	0	0	0	0	0	0	0	0	0
A	0	0	4	0	5	6	2	0	2	6	5	30
B	0	0	0	0	0	0	0	0	0	0	0	0
C	0	0	0	0	0	0	0	0	0	0	0	0
D	0	0	0	0	0	0	0	0	0	0	0	0
E	0	0	0	0	0	0	0	0	0	0	0	0
F	0	0	0	0	0	0	0	0	0	0	0	0
G	0	0	0	0	0	0	0	0	0	0	0	0
H	0	2	0	0	2	2	2	0	0	2	0	10
i	9	20	7	4	8	13	6	5	13	0	0	85
SOUTH	40	33	9	0	10	12	16	0	15	0	0	135
TOTALS	49	55	20	4	25	33	26	5	30	8	5	260

FIGURE 3
HIGH CHANNEL NETWORK
TELETYPE CHANNEL DISTRIBUTION
TYPE 5021 DUPLEX

CITY	NORTH	A	B	C	D	E	F	G	H	i	SOUTH	TOTALS
NORTH	0	0	0	0	0	0	0	0	0	0	0	0
A	0	0	0	0	0	0	0	0	0	0	0	0
B	0	0	0	0	0	0	0	0	0	0	0	0
C	0	0	0	0	0	0	0	0	0	0	0	0
D	0	0	0	0	0	0	0	0	0	0	0	0
E	0	0	0	0	0	0	0	0	0	0	0	0
F	0	0	0	0	0	0	0	0	0	0	0	0
G	0	0	0	0	0	0	0	0	0	0	0	0
H	0	0	0	0	0	0	0	0	0	0	0	0
i	6	4	2	1	3	2	2	1	3	0	0	24
SOUTH	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS	6	4	2	1	3	2	2	1	3	0	0	24

FIGURE 4
HIGH TRAFFIC NETWORK SECTION
PERCENT FILL DATA

<u>SUBSECTION</u>	<u>NO. OF CHANNELS</u>	<u>CHANNEL CAPACITY</u>	<u>PERCENT FILL</u>
A - B	130	250	52
D - C	5	60	8.3
B - D	142	250	56.8
D - E	161	250	64.4
E - F	182	250	72.8
F - H	202	250	80.8
G - H	5	60	8.3
H - I	232	250	<u>92.8</u>
AVERAGE			54.5

FIGURE 5

LOW TRAFFIC NETWORK

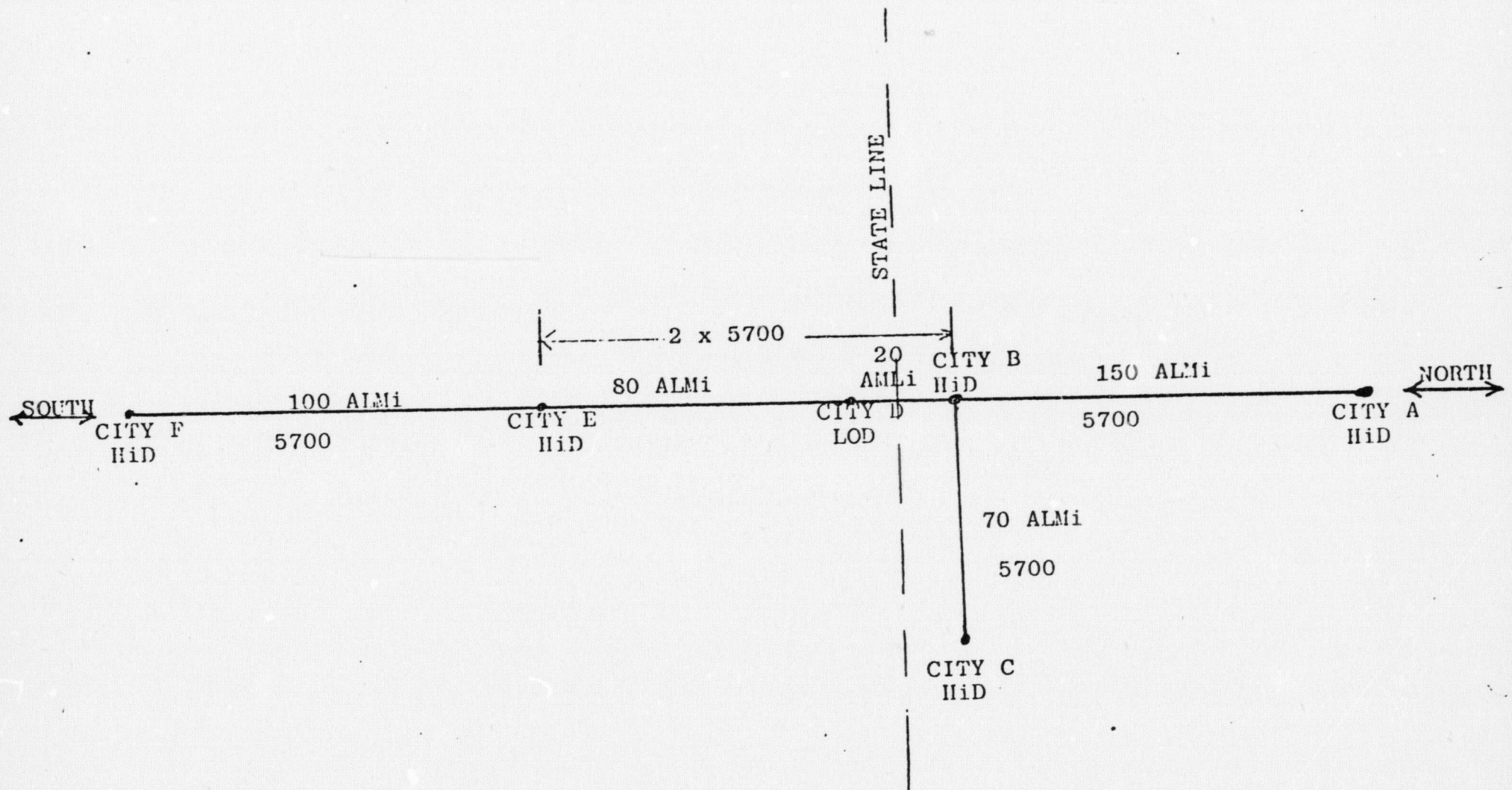


FIGURE 6
LOW TRAFFIC NETWORK
CHANNEL DISTRIBUTIONS
VOICE CHANNELS

CITY	NORTH	A	B	C	D	E	F	SOUTH	TOTALS
NORTH	0	0	0	0	4	7	8	1	20
A	0	0	0	0	3	6	7	4	20
B	0	0	0	0	2	3	3	2	10
C	0	0	0	0	2	5	6	2	15
D	1	5	5	9	0	0	0	0	20
E	5	4	5	6	0	0	0	0	20
F	0	3	3	4	0	0	0	0	10
SOUTH	0	0	0	0	0	0	0	0	0
TOTALS	6	12	13	19	11	21	24	9	115

FIGURE 7
LOW TRAFFIC NETWORK SECTION
PER CENT FILL

<u>SUBSECTION</u>	<u>NO. OF CHANNELS</u>	<u>CHANNEL CAPACITY</u>	<u>PERCENT FILL</u>
A - B	58	60	96.7
B - C	34	60	56.7
B - D	115	120	95.8
D - E	84	120	70
E - F	43	60	<u>71.7</u>
		AVERAGE	78.2

COMMENTS
Of The
CENTRAL COMMITTEE ON TELECOMMUNICATIONS
Of The
AMERICAN PETROLEUM INSTITUTE

The Central Committee on Telecommunications of the American Petroleum Institute, sometimes hereinafter referred to as the "Central Committee", pursuant to the Notice of Inquiry and Proposed Rule Making^{1/} adopted by the Federal Communications Commission in the above-styled Matter on June 26, 1974, hereby respectfully submits its Comments responsive to those inquiries posed herein.^{2/}

I. PRELIMINARY STATEMENT

1. The Central Committee is one of the standing committees of the Division of Transportation of the American Petroleum Institute whose headquarters are located at 1801 "K" Street, N.W., Washington, D.C. 20006. Members of this Central Committee represent over 40 of the leading oil and natural gas companies in the United States. The Central Committee is, in

^{1/} 39 F.R. 25351, July 10, 1974

^{2/} The Central Committee filed its Notice of Intention to File Comments in this Matter on October 17, 1974.

turn, supported and sustained by more than 500 petroleum and natural gas industry communication users.

2. Many petroleum and natural gas companies have substantial point-to-point communication requirements related to the operation of natural gas and petroleum crude and product pipelines, as well as to production, refining and administrative activities. While some of these communication requirements are met via the use of privately-owned microwave systems, others are handled over leased private line facilities which are subject to the provisions of American Telephone and Telegraph Company's (AT&T) Private Line Service Tariff (Tariff F.C.C. No. 260). Thus, members of the petroleum and natural gas industries have acquired broad experience with services covered by AT&T Tariff F.C.C. No. 260.

3. Many of these companies also utilize such private line services pursuant to the provisions of §2.2.1(c) which permits them to transmit "communications relating directly to the business of a subsidiary corporation over which the customer exercises control through the ownership of more than 50% of the voting stock." In this proceeding, as well as in the Docket No. 19746 matter, the Commission has inquired as to the justification for the shared use of private line facilities by corporately related companies.

4. An examination and elimination, if warranted, of certain tariff provisions which have had the effect of restricting the shared use of common carrier circuits could stimulate the development of more efficient means of utilizing common carrier private line facilities. On the other hand, the search for more efficient means of communications could also be endangered by the elimination of some existing tariff sharing provisions. Consequently, the Central Committee is pleased to have the opportunity to participate in this proceeding.

II. COMMENTS

5. The Central Committee submits that there is no valid justification for the current general tariff restrictions on the resale of communication services or the use of available services by third parties. Presumably, existing pricing structures are founded on the principle of limiting access to a leased circuit to only the single subscriber. If full period circuits can be used more efficiently through legitimate resale and sharing arrangements, however, a carrier could conceivably suffer some revenue loss. Consequently, while some price restructuring may be necessary, elimination of current barriers to resale sharing could also pave the way for reduced carrier plant and capital investment.

6. It is submitted that the public interest could be served by the judicious removal of some restrictions on the

resale and shared use of private line services. Artificial barriers should not be permitted to stifle innovative packaging and sharing arrangements such as those proposed by Packet Communications, Inc., Graphnet Systems, Inc., MCI Data Transfer Corporation, Telenet Communications Corp., and PCA Corporation. If these organizations are to offer their services to the general public, it is submitted that they should be subject to the Commission's jurisdiction at least as to the reasonableness and lawfulness of their charges and practices.

7. There is no unjust or unreasonable discrimination practiced by the provision of §2.2.1(c) of AT&T's Tariff F.C.C. 260 which permits present subscribers to use private line services "For the transmission of communications relating directly to the business of a subsidiary corporation over which the customer exercises control through the ownership of more than 50% of the voting stock." Indeed, the tariff would be discriminatory if it failed to include such a provision.

8. Some corporate communication users prefer to organize their companies on a divisional basis, while others elect to operate their business through wholly or partially owned subsidiary corporation. Those carrier customers who are organized on a divisional basis may clearly use their private line service for all transactions. Absent §2.2.1(c), the company operating with subsidiary corporations in lieu of divisions would be unreasonably penalized because each subsidiary corporation would have to obtain its own private line circuit or circuits.

9. Such subsidiary corporations are often housed in the building or office with the parent corporation which would add to the absurdity of requiring it to obtain separate private line facilities. The businesses of the parent and subsidiary corporations are so often interrelated that no valid distinction can be made on these organizational grounds for requiring each of them to secure separate service from a carrier.

III. CONCLUSION

10. The Commission should carefully review the possible removal of artificial tariff barriers to the resale and shared use of private line services--even though such action may require established carriers to reprice some services. Non-carrier entities should be permitted to resell private line service on a for-profit basis when they add value to the basic circuit by the incorporation of special terminal equipment. Such offerings will probably be self-controlling with respect to rates charged and the quality of service provided. The Commission should have the opportunity, however, for ultimate review and regulation of such services. Additionally, and absent the development of replacement sharing provisions, §2.2.1(c) should be retained in AT&T's Tariff F.C.C. 260.

WHEREFORE, THE PREMISES CONSIDERED, the Central Committee on Telecommunications of the American Petroleum Institute

respectfully submits these Comments and urges the Federal Communications Commission to adopt at an early date a Further Notice of Proposed Rule Making embracing those concepts discussed herein.

Respectfully submitted,

CENTRAL COMMITTEE On
TELECOMMUNICATIONS Of The
AMERICAN PETROLEUM INSTITUTE

DATED: December 11, 1974

COMMENTS
OF THE
UTILITIES TELECOMMUNICATIONS COUNCIL

The Utilities Telecommunications Council (hereinafter sometimes referred to as "UTC"), by its Chairman, respectfully submits these Comments in response to the Federal Communications Commission's Notice of Inquiry and Proposed Rule Making^{1/} in the above-designated proceeding, which was released by the Commission on July 5, 1974.

Preliminary Statement

1. UTC is the national representative on telecommunications matters of the nation's electric, gas, water and steam utilities. UTC draws its membership from and is sponsored by ten regional organizations of these utilities.

^{1/} (FCC 74-689, No. 17820.)

In fact, some 2,000 of these utilities directly support UTC's activities. In addition, UTC also draws its membership from and is sponsored by the following utility industry trade associations:

- American Gas Association
- American Public Power Association
- American Water Works Association
- Association of Edison Illuminating Companies
- Edison Electric Institute
- Independent Natural Gas Association
- National Rural Electric Cooperative Association.

2. In order for the utilities represented by UTC to meet their public service obligation of providing reliable utility service to the public on the most economic basis possible, these utilities rely heavily upon their telecommunications systems for the control and operation of the utility systems. In an effort to increase communications system reliability, and to provide alternate routes and facilities, the utilities' telecommunications systems consist of a number of components, including utility-owned microwave, power line carrier and wireline-cable systems and associated utility-owned end equipment, as well as, of course, private line circuits leased from the communications common carriers. In many cases, in order to provide the alternate routes needed, to enhance telecommunications systems reliability, with resultant enhancement of utility

systems reliability, these leased circuits are interconnected to the utility-owned telecommunications systems. As utility operations become more complex, and as operations among utilities becomes more interrelated, such as the interconnection of electric utility systems resulting in so-called "power pools", there is a growing requirement for intercommunications among large numbers of utilities concerning the mutual operation of their utility systems. This has resulted in increased intercommunications and sharing over the existing microwave and other utility-owned communications systems and also is resulting in an increased need to share leased circuits. This ability to share circuits in order to meet operational requirements must apply equally to all of the components used by a utility in meeting its overall communications requirements, be these circuits on a utility-owned system or lease circuits.

3. While these requirements are currently being met to a very limited degree, for electric utility "power pools" under the provisions of §2.2.1 of AT&T's Tariff No. 260, there are requirements within the electric, gas and water utility industries, beyond the "power pool" requirements, which could be satisfied if the tariffs were revised to permit somewhat broader sharing of leased circuits among utilities. Therefore, UTC welcomes this opportunity to provide its views on certain of the Items of Inquiry set forth in the Notice.

Responses To Items Of Inquiry

3. At the present time, UTC is only responding to those items of inquiry which lend themselves to responses from the electric, gas and water utilities. The Comments of other parties, such as those from the communications common carriers setting forth the justification for some of the current restrictions on the sharing of private line services, may provide the basis for further input from UTC on the following Items of Inquiry and others which, of course, would be the subject of Reply Comments and possibly Responses to Reply Comments. However, at present, those Items of Inquiry to which UTC can respond are as follows:

Item 6 - Would the public interest be better served by removing all restrictions on the sharing of private line facilities? If that would not be desirable, recommend necessary or desirable restrictions and justify any recommendations taking into consideration the effect of each on the carriers, other elements of the communications industry and the using public.

Response - In those cases where there is a need for electric, gas, and water utilities to intercommunicate concerning the control and operation of their utility systems and leased circuits are used to provide the necessary

communications, it would be in the public interest if the tariffs would permit utilities which have such common communications requirements to jointly order these circuits and to share in their costs. The Commission has always permitted this with respect to all utilities in the private microwave area and the carriers have similarly recognized the necessity of such sharing among interconnected electric utilities by inclusion of the "power pool" provision in §2.2.1(f) of AT&T's F.C.C. Tariff No. 260. The need for intercommunications among utilities, be they electric, gas or water, and whether this communications is over utility-owned communications facilities or leased circuits, arises because of the need to communicate for the more efficient mutual operation of the utility system involved. Such intercommunications is essential, in effect, to the more reliable and more economic operation of the utility system and in providing reliable utility service to the public. Thus, UTC submits that rules or tariff provisions which enhance the ability of utilities to share communications facilities directly benefits the public in the form of better communications for the utilities with the resultant improvement in the reliability of utility service. Thus, clearly such provisions are in the public interest.

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Item 7 - What is the public need for sharing of private line facilities? Discuss any new technologies being developed which would make sharing more attractive, new user applications of sharing and the relationship between the need for sharing and the availability of facilities for resale. Specifically, what need for sharing would remain if all restrictions on the resale of private line facilities were eliminated?

Response - In addition to the increasing requirement for intercommunication among electric utilities with respect to the operation and control of interconnected electric utility systems, there is also an increasing requirement for communication between gas distribution utilities (be they strictly gas distribution companies or so-called "combination" gas and electric companies) and gas transmission companies, and others, which supply them with gas for distribution to the public. Under Part 91 of the Rules, these gas transmission utilities and gas distribution utilities are already able to intercommunicate in those instances where they have private microwave systems. UTC submits that this sharing ability should be extended to leased circuits particularly in light of the development of new sources of gas such as the development of facilities for

the importation of liquified natural gas and the development of facilities for the manufacture of gas for use by the public as a substitute for natural gas. In fact, the reliance by the gas distribution utilities on multiple sources will increase the requirement for intercommunications among the gas distribution utility and its various suppliers. Since leased facilities are used in some cases along with privately owned facilities to provide alternate communications routes, it is essential that the same sharing provisions which apply to utility-owned communications facilities be extended to leased circuits.

Also, it should be recognized that the requirement for intercommunications among utilities for the control and operation of their respective utility systems is not confined to voice-grade traffic but also includes data circuits. Thus, any provisions for sharing of leased circuits among utilities having a common communications requirement should not be confined to voice-grade circuits but also include data-grade circuits.

Even if all restrictions on the resale of private line facilities were eliminated there would still be a requirement for sharing at least among utilities for these common intercommunication requirements relating to the operation and control of utility systems because of the

unweildiness in having to order individual circuits or configurations or facilities separately, and expect them to work together which would apply whether or not the service were secured from a communications common carrier or one engaged in the resale of common carrier services. Basically, irrespective of what steps the Commission takes in these other areas, there will continue to be, at least on the part of the utilities, a requirement for the sharing of communications circuits be they private or common carrier leased circuits.

Item 8 - What is the need for sharing of other services of AT&T and Western Union as well as the services of any other communications common carrier?

Response - Most of the common carrier circuits involved in the operation and control of utility operations are leased circuits but it may well be that on occassion there would be the need for the sharing of some of the other services of the communications common carriers and UTC believes that the utilities should be given the option to share these other services of the communications common carriers so that the utility will be able to configure the best possible network in meeting its overall communications requirements for the administration, control and operation of the utility system.

Item 9 - What is the justification for provisions of Section 2.2.1 of AT&T's Tariff F.C.C. No. 260 and Western Union's Tariff F.C.C. No. 254 which accord special tariff treatment to the airlines, corporate conglomerates, stock exchanges and their members, and others? Do such tariff provisions constitute, in whole or in part, unjust or unreasonable discrimination, or subject any person or class of persons to undue or unreasonable prejudice or disadvantage, or give any undue or unreasonable preference or advantage to any person or class of persons, within the meaning of Section 202(a) of the Communications Act?

Response - There are two provisions in Section 2.2.1 of AT&T's F.C.C. Tariff No. 260 in which UTC is interested, these being the so-called "corporate conglomerate" and the so-called "power pool" single user provisions. For the reasons set forth below, UTC believes that both of these provisions are not only justified, but essential and in the public interest, if the communications requirements of the electric, gas and water utilities are going to be met, in a meaningful and efficient manner by the communications common carriers.

With respect to the so-called "corporate conglomerate" provision, 2/ such a provision is essential if the

2/ The corporate conglomerate provision, Section 2.2.1(c) reads as follows: "For the transmission of communications relating directly to the business of a subsidiary corporation over which the customer exercises control through ownership of more than 50% of the voting stock."

Commission is to avoid discriminating against a corporation merely because of the type of corporate structure it chooses to use. If, for example, a corporation chooses the "single corporation-division" type of corporate structure where there is only a single corporation with a number of separate operating "divisions" but which are not separate corporate entities, such a corporation is free, without a provision such as that found in Section 2.2.1(c) to order all of its communications requirements from the common carriers as a "single customer or user". If there were not a provision such as that found in Section 2.2.1(c) it would mean that corporations which for good business or operating reasons, or perhaps because of regulatory requirements, must choose the "parent-subsidiary" form of corporate structure where there is not a single corporation, but rather a number of related individual corporations which are controlled by a single parent, would be placed at a disadvantage in ordering and utilizing common carrier facilities as compared with the "single corporation-division" type of organization. Thus, section 2.2.1(c) of AT&T's Tariff F.C.C. No. 260 is essential if the Commission is to avoid discriminating against the corporations which either choose or are required to organize themselves under a "parent-subsidiary" type of corporate structure. This provision, to the best of UTC's

knowledge, has not been challenged by any party, either in the instant proceeding or in the prior proceeding in Docket No. 19746. Thus, in light of the obvious discrimination which would exist, without such a "corporate conglomerate" provision, UTC submits that this provision does not constitute, in any way, an unjust or unreasonable discrimination. To the contrary, it prevents an unjust or unreasonable discrimination.

The so-called "power pool" single user provision^{3/} is essential to provide electric utilities, which have interconnected their electrical systems into a so-called "power pool" to design, configure, order and administer those common carrier leased circuits which they must utilize, for the mutual control and operation of the electric utility system. This so-called single user provision is confined specifically to that type of intercommunication among electric utilities necessary for the mutual control of the interconnected electric system, and, UTC submits that in light of the unique requirements of the utilities for this type of arrangement, in order that common carrier facilities can be most effectively utilized in the overall communications network, it is a reasonable approach to meeting the

^{3/} The "power pool" single user provision, Section 2.2.1(f) reads as follows: "Where the use of the service relates to coordination or exchange of electrical pooled power, for the transmission of communications between any two or more stations of such service or similar services furnished to others who are parties to the coordinating or exchange arrangement".

unique requirement of the utilities. This provision was included in the tariffs, constituting power pools to be "single users" for their members for purposes of power pool type traffic, to avoid the situation which previously existed prior to the adoption of this provision whereby the engineering and the ordering of new multi-point facilities between members of a power pool was so complicated that service dates, in no way, could be met. To the best of UTC's information, knowledge and belief no other party or person has challenged the reasonableness of this provision and, UTC is not aware of any other person or party who is in the same unique position as the utilities and which has a need for a provision like the "power pool" single user provision. Thus, there does not appear to be any sound basis to find that the "power pool" single user provision results in an unreasonable discrimination.

Item 10 - Should the provisions under consideration in question 9 be found to involve unlawful discriminations, what action should the Commission take to remove such unlawfulness? Fully justify any recommended tariff changes and discuss their consistency with any recommended changes with regard to resale and shared use of private line facilities in general.

Response - First of all, for the reasons set forth above in our response to Item 9, UTC is at a loss as to how the Commission could rationally find that the "corporate conglomerate" or "power pool" single user provisions involve unlawful discriminations. However, in the event the Commission does so find, UTC would suggest that since provisions like the "corporate conglomerate" and "power pool" single user provisions are needed to meet the legitimate requirements of companies which either choose or are required to organized under the "parent-subsiidiary" form of corporate organization and to meet the critical communications requirements of the power pools, and other utilities as set forth in UTC's responses to Items 6 through 8, there must be some provision whereby these needs can be met. If there are parties which have a legitimate, public interest requirement for sharing leased facilities, and are not within the purview of the existing "single user" provisions, and if such parties can justify similar specific treatment for themselves, one approach would be for the carriers to add additional "single user" provisions for those parties who can justify such additional provisions.

Another approach, of course, would be to permit more widespread sharing of leased circuits among those users which have a common communications requirement. This would

include corporations which are organized under a "parent-subsidiary" structure, as well as also including electric utility power pools and, of course, other utilities such as those gas, electric and water utilities which have a common communication requirement concerning the operation and administration of their systems. In any event, if the Commission does find the existing provisions, standing alone, as being unlawful some alternative provisions must be included to prevent discrimination merely because of the corporate structure a company might either choose or be forced to use and, also to meet the requirements of the electric, gas and water utilities for the sharing of leased circuits where there is a common intercommunications requirement.

Item 11 - Should the Commission regulate the sharing agreement made between customers and joint users and, if so, to what extent and in what manner? What reports should be required? Specifically consider possible guidelines governing the manner in which the cost of effectuating the sharing arrangement should be shared to that there is a clear distinction between sharing and resale?

Response - UTC questions the need for any monitoring by the Federal Communications Commission of any sharing

arrangements entered into among users. Presumably such arrangements will be the subject of tariff provisions as they are under the existing Sections 2.2.1(c) and (f) of AT&T's F.C.C. Tariff No. 260, and under these provisions, UTC is aware of no reason why the Commission should interject itself into how utilities share their costs among themselves under these provisions. Thus, if the Commission would expand the sharing of leased circuits as is suggested in UTC's responses to Items 6 through 8 above, and if these were the subject of tariff provisions, UTC sees no need in any additional Commission supervision of these sharing arrangements.

At the very most, the Commission should require no more of the sharing of leased circuits than is required under Section 91.9 of the Rules governing the sharing of private microwave systems, where the intercommunications is accomplished through sharing arrangements.

WHEREFORE THE PREMISES CONSIDERED, the Utilities Telecommunications Council believes that the electric, gas or water utilities should have the ability to share leased or other common carrier services among themselves where there is a common requirement for intercommunications among

these utilities and that the existing "corporate conglomerate" and "power pool" single user provisions must be retained in some form or accommodated through the aforementioned broadened sharing provisions.

Respectfully submitted,

UTILITIES TELECOMMUNICATIONS COUNCIL

Dated: December 11, 1974

COMMENTS OF
TELENET COMMUNICATIONS CORPORATION

December 11, 1974

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COMMENTS OF TELENET COMMUNICATIONS CORPORATION

Telenet Communications Corporation, by its attorneys, hereby submits its comments in response to the Commission's "Notice of Inquiry and Proposed Rule Making" released July 5, 1974.

I. STATEMENT OF TELENET'S INTEREST

1. Telenet Communications Corporation is one of three so-called "value-added" carriers holding certificates of public convenience and necessity duly issued by the Commission, authorizing such carriers to acquire by lease certain lines of existing facilities carriers for the purpose of offering interstate public communications services for hire. Telenet received a grant of its application for Section 214 authority in April 1974, and expects to commence operations within the next several months, providing a "packet-switched" data communications service.

2. Telenet is vitally interested in, and will be affected by, the disposition of many of the questions raised in the Commission's July 5

Notice, particularly those relating to the nature of regulation of the so-called "value-added" carriers.

II. SUMMARY OF POSITION

3. Briefly stated, Telenet's position with respect to the issues raised in the July 5 Notice is as follows:

(a) The "resale"^{1/} of communications facilities or services inevitably involves the offering of communications services for hire, and should be permitted only if preceded by the grant of an appropriate application filed pursuant to Section 214 of the Act, and by the filing of a valid and operative tariff. Since resale is subject to certification, the Commission will have an opportunity to make its policy in this area on an ad hoc basis when presented with specific resale proposals -- as it has already done with respect to the "value-added" carriers -- and thus should not attempt in this proceeding to establish broad criteria governing which types of resale will be permitted and which will not.

(b) The "sharing"^{2/} of communications facilities and services is a permissible means of enabling small users to defray some of the costs of obtaining communications facilities which many large users take for granted. But sharing also has the

^{1/} Resale, in these comments, refers to the provision of a communications service for hire, utilizing in whole or in part communication facilities which are leased from a common carrier.

^{2/} Sharing, in these comments, refers to a private arrangement between a small number of parties, under which they agree to share the use and the costs of certain specified communication facilities.

potential for substantial abuse in the nature of hidden resale, and accordingly should be made subject to certain restrictions.

(c) The Commission should recognize that entities reselling communications services and facilities are engaged in a common carrier undertaking, and it should regulate them accordingly -- but with appropriate allowance for the non-monopoly nature of such activity: (1) Such entities, including value-added carriers, should be required to comply with the certification process of Section 214 of the Act, by which the Commission may test whether a public need will be met by a proposed service. Following initial certification of a value-added carrier, however, liberalized procedures should be employed regarding certification of changes and additions to its authorized network. (2) The open-entry policy heretofore established for value-added services should be continued. (3) Value-added carriers and other resale-based entities, like other common carriers, should be required to file tariffs with the Commission, and to adhere to them. (4) However, detailed Commission scrutiny of value-added carrier rates and profits is not appropriate now or in the foreseeable future. The anticipated competition which can be reasonably expected to follow from the Commission's open-entry policy, coupled with further technological developments, will provide marketplace regulation of overall rates and profits which will be far more responsive and immediate than Commission regulation of such carriers' rates and profits. Until the marketplace has been proven to be an ineffective regulator of the value-added rates, therefore, the Commission should adopt a policy of restraint.

III. RESALE: A REGULATED ACTIVITY

4. The first four "Items of Inquiry" set forth in the Commission's July 5 Notice are addressed to the general prohibition of resale contained in the private line tariffs of AT&T and Western Union. Item 1 solicits justification for the existing tariff restrictions; Item 2 questions the effect of a removal of all such restrictions; Item 3 seeks recommendations of specific resale prohibitions; and Item 4 expands the questions posed in the first three items to embrace AT&T and Western Union services other than private lines, and the offerings of other carriers.

5. While the principal burden of justifying their existing tariff restrictions rests with AT&T and Western Union,^{3/} Telenet submits that their general resale prohibitions have the salutary effect of discouraging, at the threshold, the illegitimate entry of uncertificated and unregulated entities into the business of providing communications common carrier services. However, to the extent that the facilities carriers have not enforced those restrictions, the tariff prohibitions may have induced a false trust by the Commission in their efficacy. And to the extent that the carriers have enforced these restrictions haphazardly, and have carved out arbitrary exceptions to the restrictions, unlawful discrimination has been the likely result.

6. Thus, it is Telenet's view that the existing tariff provisions are of relatively minor importance in determining the basic policy questions

^{3/} AT&T and Western Union, together with other carriers which construct and operate their own transmission facilities, are hereinafter referred to as "facilities carriers" to distinguish them from carriers such as Telenet which lease all of their transmission lines from others.

posed by the July 5 Notice, and, accordingly, the discussion which follows will focus principally on the broader legal and policy aspects of the resale question.

A. Resale Should be Regulated as a Common Carrier Undertaking, as a Matter of Law.

7. The general problem of resale is not of recent vintage, nor is it unique to the communications field. Nearly thirty years ago, the U.S. Supreme Court was confronted with one facet of the problem in Ambassador, Inc. v. United States, 325 U.S. 317, 89 L.Ed. 1637 (1945), in which it acknowledged:

"One of the problems incident to the service of a subscriber who takes facilities greatly in excess of his own needs in order to accomodate others is to fix upon what terms he may extend the use of telephone facilities to others. This is an aspect of the problem of resale of utility service which is not confined to the telephone business. 3/

"3/ [citations omitted].

"Remetering of electric energy creates similar problems of regulation, often dealt with by tariff prohibition of remetering. [citations omitted]." (325 U.S. at 322; 89 L.Ed. at 1641-42).

8. Even before Ambassador, the Commission determined that one who leased lines from a carrier for the purpose of resale required Commission certification as a common carrier prior to engaging in such activities: See Mackay Radio and Telegraph Company, 6 FCC 562 (1938), wherein the Commission stated:

"It is earnestly contended that Section 214 does not apply unless new 'construction' is involved. This theory is not tenable in view of the language of the Section itself which by its very terms

applies not only to new construction but to 'acquisition', 'operation', and also to transmission 'over or by means of' additional or extended lines.

* * *

"It is interesting to speculate upon the far-reaching effects of the interpretation here contended for, so far as the telegraph industry is concerned. It would open wide the door for nation-wide expansion by a telegraph carrier having little or no physical facilities of its own, without any possible supervision by this Commission and though disastrous competition might result. It is conceivable that a newcomer into the public telegraph field might lease idle circuits on every line of the Bell System and thereby without the necessity of any capital expenditure whatever extend its public telegraph system to every area in the United States by the simple device of superimposing such public telegraph system upon the existing telephone plant. This might or might not mean ruin for both Western Union and Postal. It might or it might not be in the public interest, but is hardly conceivable that Congress intended to permit it unless the Commission should first find that it would be in the public interest." (6 FCC 562, 573-4; emphasis added)

9. Just as Mackay Radio obtained facilities from Postal Telegraph Co. and resold the same during the 1930s, Western Union and other carriers have for decades engaged in similar resale of facilities obtained principally from the Bell System. Likewise, the international record carriers obtain domestic facilities between gateway cities from Bell, and international facilities from Comsat, for purposes of resale. And the specialized carriers obtain facilities for resale from Bell, Western Union, and each other.^{4/} In some cases the resale involves the addition of "value", such as message-switching service performed by Western Union or circuit-switching

^{4/} For example, Southern Pacific Communications Co. (SPCC) leases both terrestrial and satellite circuits from Western Union; Datran leases circuits from SPCC; and MCI has applied for permission to lease circuits from Western Tele-Communications, Inc.

by Datran, resulting in a transformation of the facility or service obtained by the "reselling" carrier into a different type of service provided by such carrier. And in other cases the resale is a straight pass-through of identical service, such as private line service, with no value added. In some cases the reselling entity obtains facilities from other carrier(s) merely to supplement its own substantial network of transmission facilities, as is true with Western Union. And in at least one case -- Datran -- a firm originally planned to offer common carrier service exclusively over its own facilities, but later modified its business approach such that service would be offered in part by means of resale of facilities leased from other carriers.^{5/}

10. The significant common thread which runs through all of these examples of resale is that the Commission has treated the reselling entity as a common carrier subject to the same entry and operating regulation as the facilities carrier from whom the channels are obtained. Since Mackay, there has been no suggestion that the Commission should -- or could -- do otherwise. For, after all, the service provided by the reselling entity is the same regardless of whether the facilities used to provide that service are constructed by the entity itself or are obtained under lease from another organization. Neither the physical characteristics of the end service being provided, nor the tariff rates, nor the markets in which the service competes, depend upon the source of

^{5/} After discovering the economic infeasibility of its original plans, Datran first decided to lease from Bell local distribution facilities throughout its network, rather than constructing its own, and later decided to also lease from other specialized carriers intercity circuits rather than building its own microwave facilities along certain routes.

the facilities used to implement the service. The method of implementation is fundamentally a management decision, the classical "make versus buy" decision discussed in business texts, and it certainly should not determine the regulatory outcome. Indeed, if the means of implementation were pivotal from a regulatory standpoint, how should the Commission treat firms such as those discussed above who do it both ways, constructing some facilities and leasing others, yet offering the same service over both without distinction? Should the constructed portion of their networks be regulated and the leased portion be left unregulated? Clearly not.

11. Rather than basing its determination upon the means of implementation of a service offering chosen by the firm, the Commission has always (and properly) looked to the nature of the service offering itself -- the end result rather than the means to that end. If the service offering is communications in nature, as defined in Sections 3(a) and 3(b) of the Act, and if it is offered to the public at large, it has been held to be a common carrier undertaking. Period. The Act by its terms requires such treatment, and the intent of Congress in this regard is clear, as the Commission found in Mackay. The Commission has ample discretion under the Act to determine to what extent detailed regulation of resale-based communications services is desirable, as discussed in Section V infra, but it has no discretion to exempt such service offerings from its regulation altogether.

B. Resale Should be Regulated as a Common Carrier Undertaking, as a Matter of Policy.

12. Entirely aside from the fact that Section 214 of the Act, as construed by the Commission in a variety of contexts, requires certification

as a condition precedent to offering a resale-based communications service, sound public policy considerations warrant the same result. The very foundation of Federal regulation of communications-for-hire involves two principal elements: (1) Availability of service to all citizens without discrimination; and (2) reasonable and economic rates for such service. Unregulated resale involves an inherent potential for discrimination as to both service and charges, not only among the entities to whom the service is rendered, but as to entities excluded from such service. It also involves unfair competition with regulated entities offering like services; and presents the unregulated entity with opportunities for cross-subsidization not available to the regulated competitor. Perhaps of greatest significance, the unregulated resale of communications services deprives the customers of such services of recourse to the Commission for adjudication of any claims of discriminatory or unjust treatment, thereby frustrating the basic objective of Federal regulation -- the protection of the public.

13. Moreover, the achievement of other regulatory goals of the Commission would be frustrated if resale were to go unregulated. Although there are several possible illustrations of this fact, one -- particularly related to the data communications field -- suffices to make the point:

(a) Policy. The interrelationship of computer and communication services was the subject of the Computer Inquiry several years ago. There, the Commission identified several areas of regulatory concern arising from the simultaneous participation of firms in both types of businesses, and established the principle of "maximum separation" as a cornerstone of its policy in this field. See,

Final Decision and Order, Docket 16979, 28 FCC2d 267, at 268-275 (1971). Specifically, the Commission recognized the potential for cross-subsidization and preferential self-service where communications carriage and data processing services were combined, and required, by the adoption of Section 64.702 of the Rules, that carriers conduct any data processing service business through separate corporate affiliates. See, Final Decision and Order, supra, as modified on appeal, GTE Service Corporation v. FCC, 474 F.2d 724 (1973).

(b) Result in Practice. Value-added services are of particular interest and applicability in the data communications field, and many of the larger companies in the computer services industry operate data communications networks which are, or could be, used for the provision of value-added communication services -- e.g., Tymshare, Inc., discussed at paragraphs 44-53 infra. The potentials for preferential self-dealing and cross-subsidization are no less in the case of a Tymshare than in the case of a carrier offering its own data processing service. Of course, no carrier does so (except through a separate corporate affiliate, which cures these problems), because the Commission has prohibited it. But that prohibition is of no utility where the Commission has declined to regulate the communication service offerings of a data processing firm.

C. The Commission Should Not Attempt in This Proceeding to Define the Types of Resale Activities Which Will be in the Public Interest.

14. We have argued, based both on law and policy considerations, that the Commission should affirm and adhere to its present policy that resale

of common carrier services and facilities is itself a common carrier activity, which must be preceded by Section 214 certification and by the filing of a valid tariff. Such a policy will ensure that the Commission will be presented with the salient facts concerning each instance of resale which is proposed in the future; based upon such facts, it can make its public interest determination in each case as required by law. It is neither necessary nor appropriate at this time, in this general proceeding, and in the absence of factual information regarding specific resale activities which may be proposed, to attempt to make such judgments concerning which types of resale will be in the public interest.

15. The holding of the Supreme Court in the landmark "Three Circuits" case, FCC v. RCA Communications, Inc., 346 U.S. 86, 73 S.Ct. 998 (1953), is instructive in this regard. There, the Commission authorized a carrier to establish several new circuits on routes already served by another carrier, on the general theory that national policy favors competition wherever feasible. Justice Frankfurter, writing for the Court, found this to be an "abdication" of the Commission's duty under the Act, and concluded that -- while the Commission has considerable discretion in its licensing role -- it must be "guided by the 'public interest, convenience, or necessity,' a criterion we held not to be too indefinite for fair enforcement." 346 U.S. at 90,95. Specifically, it was held, "[t]he Commission must at least warrant, as it were, that competition would serve some beneficial purpose such as maintaining good service and improving it." Id. at 97. The Commission has recently been reminded of its statutory duty to find some public benefit before authorizing competitive communications services. Hawaiian Telephone Company v. FCC, 498 F.2d 771 (D.C. Cir. 1974). There, the court reiterated the Commission's duty to "find that the public convenience and necessity

dictate the new service," Id. at 774, and prescribed the method of analysis to be used in reaching such a determination:

When the FCC considers an application for certification of a new line, it must start from the situation as it then exists, and must apply the statutory standard to determine whether indeed the public convenience and necessity requires more or better service. If it determines that more or additional competitive service would be in the public interest, then it can consider how much added service is necessary, and finally to whom the opportunity for providing service should be awarded. In this latter determination the Commission can balance equities and opportunities among the various carriers. The initial question for the Commission, however, must be whether the public interest requires more or different service. (Id. at 776)

Thus, in the absence of specific resale-based service proposals before it, the Commission can scarcely conclude that any or all such services are in the public interest. Rather, the Commission has a clear mandate to examine each proposal on its own merits and reach a determination accordingly.

16. It is noted that Paragraph 29 of the Notice refers to several questions raised by Western Union in its June 1973 Petition for Inquiry and Rule Making (RM-2218), questioning generally whether the public interest would be served by the authorization of value-added carriers and other types of resale-based activity. It is far from clear whether or not Western Union still continues to press these questions, in light of the Commission's subsequent grants of authority to PCI, Graphnet Systems, Inc., and Telenet.^{6/} In any event, as to such carriers, all cognizable public interest questions have already been answered in the affirmative and need not be revisited in the instant proceeding. Moreover, because there are a wide variety of types of potential resale activity (see paragraph 18 infra), each with different

^{6/} See, as to PCI, 43 FCC2d 922 (1973); as to Graphnet, 44 FCC2d 800 (1974); and as to Telenet, 46 FCC2d 680 (1974). Significantly, Western Union was unable to marshal any specific arguments against the value-added proposals of these applicants.

technological characteristics and different target markets, to attempt to address in an overall sense the general public interest questions posed by Western Union would be a virtually impossible task.

17. In this respect, the policy questions regarding what sort of resale activities should be authorized by the Commission are far more complex than those which the Commission considered several years ago in its Specialized Common Carrier proceeding. There the issue of whether the public interest would be served by the creation of new competition in the communications industry in the form of specialized common carriers was dealt with in a public inquiry and rulemaking proceeding (Docket 18920), but only after the Commission had before it (1) specific Section 214 applications on file for the proposed new services, (2) comments of interested parties directed to those applications, and (3) the record developed in the Computer Inquiry, regarding the requirements of users for specialized services which the applicants proposed to provide. Additionally, and of significance, the specialized carrier applications (with one exception, namely Datran) all proposed essentially similar systems and services, differing from one to the other only in terms of the geographic areas to be served.

18. In contrast to such a homogeneous group of proposals, the resale field is highly heterogeneous, encompassing service activities and proposals such as:

- Pure line brokerage (William F. Hogan Associates and Series 11,000, Inc.);
- Multiplexed private-line data communication networks (RCA Joint User Service, Timeplex, and Scantlin);
- Concentrator-based data communications networks (MCI Data Transfer Corp.);

- . Packet-switched data communication networks (Telenet and PCI);
- . Other switched data communication networks (Tymshare);
- . Packet-switched facsimile networks (Graphnet);
- . Facsimile networks utilizing message toll or WATS telephone service (Facsimile Transmission Network, Docu-Trans, Inc., Titan Industries, Xero-Fax, Inc., etc.);^{7/} and
- . Other types of services not yet conceived or publicly announced.

19. Thus, the Commission was in a position to make informed judgments in Docket 18920 regarding the need for the particular specialized carrier services proposed, the impact of such services upon the rest of the common carrier industry, and the like, which it cannot do in this proceeding regarding the great variety of resale-based services. The Commission's case-by-case consideration of value-added proposals, based upon specific facts presented to it in the form of Section 214 applications, is a logical and proper extension of the policies and procedures established in Docket No. 18920.

IV. SHARING: THE DEFINITIONAL PROBLEM, AND SOME PUBLIC INTEREST CONSIDERATIONS

20. Items 5 through 11 of the Commission's "Items of Inquiry" pose a variety of questions concerning the sharing of private line services and facilities. Telenet will not attempt to respond to each and every item contained therein: Some questions have been effectively answered in the context of the foregoing discussion regarding resale; others, such as the "single user" questions posed in Items 9 and 10, are of less direct concern to Telenet.

^{7/} For a more complete list, see Appendix A to Western Union Petition for Inquiry and Rule Making, June 25, 1973 (RM-2218).

A. Line Sharing Satisfies a Public Need, and Should be Permitted.

21. In response to Item 7 -- which questions the "public need for sharing", it is submitted that the sharing of private line communications services and facilities potentially serves two legitimate public needs: (a) Sharing may achieve a more efficient utilization of communications facilities, and thereby result in the conservation of the radio spectrum and other natural resources; and (b) sharing permits small users to meet their communications needs on an economical basis, thereby meeting the statutory mandate of Section 1 of the Communications Act:

"...to make available, so far as possible, to all of the people of the United States a rapid, efficient, Nation-wide and worldwide wire and radio communication service with adequate facilities at reasonable charges..."

At the same time, it should be recognized that unlimited sharing of private line services has the potential for developing into an unlawful resale activity. Moreover, the very economies which justify sharing result in some diversion of business from the carriers -- including the carrier whose services are being shared. Thus, sharing carries with it a potential both for unregulated competition with other carriers, and for discrimination against those customers of the carrier for whom sharing is not feasible. Unrestricted sharing could well result in a new and second tier of "Hi-Lo" cost distribution to communications users, with those users who communicate between major cities buying communication facilities in bulk and sharing such facilities, thereby realizing economies not available to users who are geographically remote and thus find sharing infeasible. Telpak Sharing, 31 FCC2d 674, recon. denied 32 FCC2d 619 (1971).

22. Historically, the potential harm flowing from sharing has outweighed the potential good, and the carriers' specifically included provisions in their tariffs prohibiting such sharing. In the late 1960's, requirements for more liberalized sharing regulations arose, in large part as a result of the increased economic attractiveness of line sharing created by modern data communication systems and traffic patterns. Responding to these requirements, AT&T introduced "joint user" provisions in its private line tariff 260, permitting sharing under certain circumstances. Although the Commission has never addressed itself to the merits of AT&T's action, it appears that liberalization of the tariff in this regard was and is in the public interest. However, nearly six years of experience with these tariff provisions indicates the need for certain changes in the regulations governing the conduct of sharing activities. Given their potential for harm, such activities should be carefully limited and controlled by the Commission in the manner and for the reasons set forth below.

B. The Validity of Existing Restrictions on Sharing.

23. In Item 6, the Commission asks whether "the public interest [would] be better served by removing all restrictions on the sharing of private line facilities?"; and Item 5 questions "the justification for limiting the sharing of private line services to, generally, voice-grade and under services and for requiring those desiring to effectuate a sharing arrangement to have a communications need of their own?" If the interrelationship between resale and sharing is properly understood, the answers to these questions becomes self-evident. The definition of sharing, and its

differences from resale, dictates the continuation of the tariff restrictions upon sharing: To remove those restrictions would be to abolish the boundary between sharing and resale. For example, the typical tariff requirement that the customer who undertakes a sharing arrangement must have a communications need of his own^{8/} can hardly be deemed a "restriction", for, absent such a communications need, the customer is merely a broker, reselling the communications services of the carrier. For the reasons set forth at paragraphs 7-13 supra, such resale activity should be permitted only by a duly-certificated carrier.

24. Similarly, the tariff restrictions which generally limit sharing to lines of voice grade or lesser capacity have a rational basis, in two respects. First, wideband sharing would disrupt the market for voice-grade leased circuits, as large users were diverted to lower-priced shared wideband circuits; this would impact the revenues of the facilities carriers and force voice-grade rates upward, to the detriment of the small user unable to obtain shared facilities. Secondly, the limitation of sharing to voice-grade facilities tends to minimize the user's temptation to order far more capacity than his own communication needs justify, and resell the excess at a profit. Illustrative of the abuses which might flow from permitting wideband sharing are the activities of William F. Hogan Associates, Inc., and Series 11,000, Inc., several years ago, when AT&T's experimental offering of wideband Series 11,000 lines permitted joint use. As described in MCI's June 1972 Petition for Rulemaking (RM-1997), at pages 18-25, these operations involved extensive brokering and the provision of private line service for hire, and were transparent cases of resale.^{9/}

8/ See the definition of "Customer" in Section 2.5 of AT&T's private line tariff, FCC No. 260.

9/ AT&T's acquiescence in the Hogan-Series 11,000 resale operations -- despite repeated Commission requests for justification -- supports the views expressed in paragraph 5 supra that the tariff restrictions on resale are an inadequate substitute for Commission oversight and enforcement, and that AT&T's checkered history on enforcement involves a separate and serious case of discrimination.

C. Additional Sharing Restrictions Are Required
to Prevent Unregulated Resale.

25. The Commission also asks, in Item 6, that commenting parties

"recommend necessary or desirable restrictions [on the sharing of private line facilities] and justify any recommendations taking into consideration the effect of each on the carriers, other elements of the communications industry and the using public."

As detailed below, Telenet urges adoption of the following specific restrictions by the Commission, to ensure that "sharing" remains just that:

- (a) Elimination of the potential for profit by barring the "Customer"^{10/} from charging his "Joint Users"^{10/} for any ancillary equipment and/or services, or for more than their proportional share of the cost of the shared line(s); and
- (b) Limitation upon both the numerical and economic size of sharing arrangements.

(1) Eliminate Potential for Profit

26. Whereas the motive for sharing is economy, the motive for resale is profit. In the absence of profit, or the potential for profit, resale will not occur. Although the Commission's Common Carrier Bureau has previously, on an ad hoc basis, expressed the view that the profit element is conclusive on the question of resale,^{11/} such expressions seemingly have

^{10/} As used herein, "Customer" and "Joint User" have the same meanings as in AT&T's private line tariff:

"Customer ... denotes the person, firm or corporation which orders service and is responsible for the payment of charges and compliance with Telephone Company regulations..."

"Joint User ... denotes a person, firm or corporation who is designated by the customer as a user of a private line service furnished to the customer and to whom a portion of the charge for the service will be billed under a joint user arrangement..." (Tariff FCC No. 260, Sec. 2.5)

^{11/} See letter of Chief, Common Carrier Bureau, to Timeplex, Inc., dated February 5, 1971, quoted in MCI's Petition for Rule Making (RM-1997).

failed to deter other entities from instituting sharing arrangements which evolve into profitable activities.

27. The rationale for eliminating the potential for profit from a sharing arrangement is clear. Without the potential for profit, an organization engaged in sharing (the "Customer" of a common carrier) will not seek to expand its communication facilities unduly, will not solicit "Joint Users" for its communication facilities beyond those necessary to utilize the firm's excess communications capacity, and will not in general hold itself out as a supplier of communication services. However, for the profit restriction to be effective, the opportunity for profit must be truly absent.

28. Where mere sharing of a line is involved, and none of the sharing parties supplies hardware or software for the purpose of facilitating the sharing arrangement or enhancing the ultimate communications service, the only potential for profit arises out of the possibility that the Customer might allocate to his Joint Users a greater portion of the facilities carrier's charges than justified by their proportional use. However, where the Customer adds to the lines leased from the facilities carrier channelizing or switching equipment, software, or other enhancing features, or undertakes administrative responsibilities on behalf of the Joint Users, a virtually limitless potential for profit arises if the Customer is permitted to charge his Joint Users for a portion of these ancillary costs.

29. There are several specific ways in which an organization leasing communication facilities might obtain a profit through the "sharing" of these facilities with others. First, as noted above, the firm could allocate to the Joint Users a share of the facilities carrier's charges which exceeds

such users' ratable portion based on their use of the shared facilities.^{12/} Secondly, the firm could utilize certain equipment in conjunction with the "shared" lines, such as line conditioners, modems, multiplexers, programmable concentrators, switching computers, testing and monitoring equipment, etc. and charge the Joint Users more than their ratable portion of the cost of the equipment. Finally, the firm could charge the Joint Users for network design, software development, and administrative costs, and could levy a "network management fee" which could also include an element of profit. In each of these areas, while it is difficult to determine whether in fact a profit is being made, it is clear that a potential for profit exists.

30. The easiest case to control involves the charges for the line facilities themselves, leased directly from the facilities carrier. Here, the actual costs on a monthly basis are known, and it is only necessary to estimate or measure the actual pro-rated usage of these facilities by each of the parties involved.

31. Policing the allocation of charges for any ancillary equipment also being shared among the users, in order to eliminate profit, is substantially more difficult. If the equipment is owned and operated by the Customer and used by the Joint Users, the Customer has the opportunity to earn a profit on such equipment simply by charging his users a monthly fee which exceeds the monthly depreciation rate for the equipment; the Customer may also agree to maintain the equipment, and include a maintenance fee in the monthly equipment rental charge. It would be almost impossible for a regulatory agency

^{12/} AT&T's Tariff 260 currently permits such over-allocation, granting to the Customer the sole right to specify percentage allocations of charges for shared facilities; See Section 3.1.5(A)(5).

to determine whether the monthly charges for equipment leasing and maintenance in this case included an element of profit or not. This would require a determination of the appropriate depreciation periods, the likely salvage value, the appropriate interest cost for capital invested in the equipment, the amount and cost of maintenance required, and so forth.

32. Finally, any charges imposed by the Customer upon his Joint Users for network design services, for software used in computer switching or concentration equipment in the network, or for administrative costs associated with management of the network, would be even more difficult to police effectively. Even if the Customer clearly divided the fees charged to the Joint Users into these discrete categories it would be difficult to determine whether or not the potential for profit was realized. Moreover, in practice, the Customer might well charge the users on a lump sum basis which was not directly related to these categories but was based upon other criteria, e.g., the amount of traffic sent by each user.

33. It is not believed reasonable to expect the Commission to undertake the detailed auditing of cost allocations among sharers which would be necessary to ensure that profit is not being realized, even if such procedures would be efficacious if undertaken. It is urged that, instead, the following rules be adopted:

(a) The proportion of the Carrier's total charges for the shared facilities which the Customer allocates to himself shall be no less than the proportional usage by the Customer of the shared facilities.

(b) The Customer may not impose upon or collect from his Joint Users any charges other than their proportional share of the Carrier's charges for the shared facilities. (Or, where

the Carrier bills and collects from the Joint Users directly -- as does AT&T -- the Customer may collect no charges of any kind from the Joint Users.)

34. At first blush, these rules might appear rigid and doctrinaire. Undoubtedly, their adoption would impact several existing "sharing" arrangements. For example, the RCA Joint User Service described in Paragraph 8 of the Commission's Notice would have its profit potential eliminated. But that operation appears to be a clear case of resale in fact.^{13/} Similarly, the Tymshare network operation^{14/} (but not Tymshare's data processing services business) described in paragraph 9 of the Notice would be impacted, in that Tymshare would be prohibited from charging its "sharing" users for switching, connect time, and data transmission, although it would continue to be proper for Tymshare to allocate to those sharers their proportion of the charge for the voice-grade lines used in the network. While these prohibitions, viewed in isolation, might appear to be harsh, they must be considered in light of the fact that the Commission has decreed a policy of "open entry" for value-added carriers, under which it is always open to an RCA or a Tymshare to seek carrier status if it wishes to continue to engage in what is in every relevant sense a carrier activity. Moreover, beyond the "open door," Telenet has recommended a hospitable regulatory environment which, while affording ample protection to the public, need not be burdensome for the regulated resale carrier.

^{13/} For a more detailed discussion of RCA's Joint User Service, see Paragraphs 40-43, infra.

^{14/} See paragraphs 44-53, infra.

(2) Limit the Scale of the Sharing Activity

35. In order to further ensure that a user sharing his communication facilities with other users does not engage in resale by holding himself out to the public as a supplier of communication services, it is desirable to establish thresholds beyond which further sharing is prohibited, or at which point the sharing parties are required to submit certain descriptive and financial information to the Commission for a formal determination as to the legitimacy of the sharing activity.

36. For example, we submit that an organization which "shares" a communications network consisting of lines leased from common carriers and other ancillary equipment with more than a few other users may no longer be engaged in simple sharing, but rather is likely to be engaged in supplying communication services for hire. Similarly, we submit that, where an organization obtains substantial revenues from other users of the organization's communication facilities, the activity may no longer constitute the sharing of the facilities, but rather the resale of these facilities for a profit.

37. We therefore recommend that the Commission either (a) prohibit sharing beyond specified limits entirely, or (b) establish these limits as points at which a sharing entity must seek Commission approval prior to further numerical or financial expansion. The suggested limits are:

- No more than five Joint Users may share a given communication facility or system; and
- The aggregate charges to the Joint Users for the use of a shared facility or communications network shall not exceed

\$10,000 per month, and shall not exceed 50 percent of the total cost of the facility or network.^{15/}

38. If the Commission elects to adopt such limits as "trip-wires", rather than as absolute barriers, it should institute reporting procedures containing the following principles:

(a) Each common carrier whose facilities are subject to one or more "joint-use" arrangements above the threshold criteria should make a semi-annual report to the Commission, setting forth the following information:

1. The name and address of each Customer engaged in joint use above the threshold;
2. The number of Joint Users of each such Customer;
3. The total monthly charges billed by the Carrier for facilities which are the subject of each such sharing arrangement; and
4. The aggregate of the Carrier's charges allocated to the Joint Users of each such Customer.

(b) Each Customer wishing to engage in joint use above the specified thresholds should be required to file, at least 60 days prior to the anticipated "threshold date", the information called for below; the Commission should give public notice thereof and afford interested parties a brief period in which to comment; and, in the absence of objection by the Commission or any interested party within a discrete

^{15/} Of course, if the Commission does not adopt the recommendation made above, that the Customer be permitted to charge his Joint Users only for their proportion of the line costs, this limitation to 50 percent of the total line costs could be easily circumvented -- the Customer could hold his allocation of line costs to the Joint Users to less than the 50% limit and make up the difference by inflating his charges for equipment, network management, and the like.

period (60 days or less) the Customer should be free to proceed with his arrangement. Thereafter, at six-month intervals, the Customer should be required to make similar reports, setting forth the required information as it existed in the month immediately preceding the filing of the report. The contents of the Customer's report should include the following:

- Specification of all lines leased from a carrier or carriers which are the subject of the joint use arrangement, and the carrier's monthly charges therefor.
- Identification of the Customer's own use of these facilities, with particular reference to the locations between which such needs exist, the type and number of channels utilized in meeting those needs, and the type, location, and ownership of ancillary equipment (modems, multiplexers, etc.) utilized to meet such needs.
- Identification of the Joint User(s), specification of the month-by-month allocation for the preceding twelve months to each such user of the carrier's charges, and the basis for such allocation.
- Identification of any other fees paid by the Joint User(s) to the Customer, and the purposes and cost basis therefor.^{16/}
- Copies of any advertisements or promotional or marketing literature distributed by the Customer concerning the availability of line sharing.
- Copies of any contracts or agreements between the Customer and a Joint User.

^{16/} This would be necessary only if the Commission rejects the rule barring all such fees, proposed above.

- Identification of any business relationships between the Joint User(s) and the Customer.

D. Discussion of Specific "Sharing" Cases
Cited by the Commission.

39. In paragraphs 8 and 9 of the Notice, the Commission described the communications networks operated by RCA and by Tymshare, Inc., which claim to be engaged in the shared use of AT&T private line facilities, rather than in the provision of communication services for hire through the resale of such facilities. As explained in the sections below, it is Telenet's contention that the RCA "Joint User Service" activity raises serious questions as to whether or not RCA is, in fact, holding itself out as a supplier of communication services and should therefore be treated as a carrier. In the case of Tymshare's communication offering, Telenet believes that there can be no doubt whatsoever that the company is engaged in the provision of a communication service for hire, and that such activities should therefore be subject to Commission certification and other applicable requirements of the Communications Act.

(1) The RCA Joint User Service

40. RCA Global Communications, Inc. is responsible for the planning, management, design, operation, maintenance, and marketing of the RCA Joint User Service. The Joint User Service is an arrangement whereby RCA leases voice-grade lines from AT&T, subdivides them using time-division multiplexers into telegraph-grade channels, uses some of these sub-channels internally, and markets the use of the remaining telegraph-grade channels. This activity

is justified by RCA under the joint user provisions of AT&T's private line tariff.

41. This type of service offering is virtually identical to the private line telegraph-grade service and time-division multiplexing service (Datacom) offered by Western Union. The primary difference appears to be the fact that the Western Union customer can terminate his service on 30 days' notice, while the RCA "Joint User" is subject to a longer contractual term. Western Union for many years, and still today, obtains many of its communication channels through lease arrangements with AT&T and thus the fact that RCA leases its circuits cannot be a distinguishing factor.

42. RCA actively markets its Joint User Service through a sales force and various promotional advertisements, brochures, and articles (see, e.g., Attachments A through E hereto), and, indeed, admits that it undertook the activity primarily as a "business opportunity" rather than merely as an attempt to reduce its own communications costs. For example, Mr. C. G. Arnold, then-director of the Joint User Service, made the following comments in an article "Joint Use Service, A New Business Venture" (see Attachment E; emphasis added):

In September 1971, Robert W. Sarnoff, Chairman of RCA Corporation, said that RCA would concentrate significant efforts "in the development, manufacture and marketing of specialized data communication systems for application in such areas as government and defense, communications networks, and especially designed business systems." The Corporate Marketing and Planning Staff under this policy direction has analyzed many new business opportunities in the above fields. From these analyses a new RCA business opportunity called "Network Management and Joint Use Service" emerged and was recently approved by Corporate Management for initial implementation." (at p. 53)

* * *

Recent announcements by one of the carriers pursuing the domestic satellite field, state that joint use tariffs will be offered on bandwidths as large as a full satellite transponder. Such offerings would expand the Joint Use market opportunity many fold.

RCA's interest in Joint Use was based on the merits of that business opportunity. (at p. 57)

* * *

The network management fee, which covers RCA costs and profits, is further divided into two portions. (at p. 56)

* * *

Also, a load of 15 to 20 circuits on a voice-grade line is required to assure significant savings for the users and a profit for RCA. (at p. 56)

* * *

As the business matures and more users join the activity, additional cities and voice-grade links will be implemented to support the additional requirements. (at p. 57)

43. In addition to the proportional line charges, RCA imposes on its "Joint Users" a network management fee, which RCA concedes in the above excerpts "covers RCA costs and profits". And rather than relying on AT&T's maintenance and service departments, RCA provides its "Joint Users" a "Network Monitor and Control System ... on the job around the clock" (see Attachment C). Thus, the RCA operation appears to be a communications service for hire, subject to regulation as such.^{17/}

(2) The Tymnet Data Communications Service

44. As stated in the Commission's Notice, Tymshare, Inc. is a major data processing and data communications enterprise and operates an extensive

^{17/} It is recognized that before the institution of the RCA Joint User Service, the Common Carrier Bureau reviewed RCA's plans. It is doubted, though, that the Bureau had as much information before it as RCA has now revealed publicly, and, in any event, the Bureau's acquiescence cannot be deemed precedential.

national and international data communications network called "Tymnet". At present Tymnet interconnects more than 60 cities and serves over 40 large-scale data processing computers. The network itself consists of approximately 100 communication processors for switching and access control, interconnected by approximately 60,000 miles of leased voice-grade communication lines.^{18/}

45. The network is employed, first and quite properly, to permit users of Tymshare's data processing services to obtain remote access to Tymshare's own data processing computers. These users are "authorized users," in the language of AT&T Tariff 260. Secondly, and entirely independently of the first use, the network is used as a switched data communications vehicle to permit the terminals and computers of other organizations to intercommunicate.^{19/} In this latter activity, an organization which operates its own data processing computer(s) attaches them to the Tymnet for the purpose of remote terminal access by users of such computer(s).

46. At present, approximately 20 non-Tymshare computers are served by Tymnet, constituting about half of all the data processing computers served by the network. Many hundreds of individuals use Tymnet for communication purposes to access these computers, and we estimate that Tymshare earns well over a million dollars per year in revenue from the provision of these communications services.

^{18/} Attachment F hereto describes in detail Tymshare's communications network, the service it provides, and the charges therefor.

^{19/} Operationally, the data switching service functions as follows: A terminal operator first connects his terminal to the nearest Tymnet communications processor through the local telephone network. The operator then identifies himself and indicates the remote data processing computer with which he wishes to communicate. The remote computer may be either a Tymshare or non-Tymshare computer. The Tymnet network supervisory computer then establishes a switched connection through the Tymnet between the terminal and the remote computer. The user can, at any time, terminate the "call" and, if authorized, establish a connection to another computer on the network.

47. The Tymnet communications service is actively marketed, under the direction of a network marketing manager and publicized through articles in trade publications and speeches at trade shows. And the subscribers to the Tymnet communications service have even formed a Tymnet Users Group.

48. The charges for the communications service are billed to the customer whose computer is being accessed, and consist of (a) the pro-rata share of the network lines that its users use, and (b) a fee which is based on the cumulative time that all terminals were connected to its computer, and on the total number of characters that those terminals transmitted through the network. (See Attachment F, at pp. 67-68.) In other words, the users of Tymnet obtain a switched service and pay according to the amount they use the service, much as the users of the telephone network pay for that switched service according to the amount of usage.

49. The Tymnet manager responsible for the marketing of network communication services summarizes the service offering as follows:

In summary, TYMNET is the first commercially distributed value added network. ... It offers low-speed terminal users the ability to access any host on the network, including their own company's computer.

When the users are scattered over a large geographic area with relatively few terminals in each city, the network provides high reliability at a fraction of the cost of other common carrier services. (Emphasis added) 20/

50. Tymshare has justified this activity by alleging that it is "sharing" its network with these third-party users, and that such sharing is permitted under AT&T's Joint Use tariff provisions. And AT&T has stated, in a recent letter to Tymshare, "It is our opinion that the fee charged by

20/ Coombs, W., "Tymnet: A Distributed Net," Datamation, July 1973.

Tymshare to joint users for data message switching is outside the scope of our tariff responsibility." (Emphasis added)^{21/}

51. Independent of whether or not Tymshare's network service is in compliance with the existing Joint User provisions of AT&T's tariff, the communications service being offered is almost indistinguishable from other common carrier services authorized by the Commission and requires comparable treatment. The Commission itself indicated in the Notice that the communication service being provided by Tymshare is "much the same as that proposed by PCI and others" (such as Telenet), and the Commission has already concluded that:

[I]t is our opinion that the services PCI initially will offer the public over its proposed facilities would constitute PCI a common carrier within the meaning of Section 3(h) of the Communications Act and thus subjects PCI to the certification and other applicable requirements of Title II of the Act. ^{22/}

52. The mere fact that Tymshare is itself a large user of the communications service which it provides is no reason for exempting the firm from the provisions of the Communications Act, or from the Commission's policies developed thereunder. Rather, the fact that Tymshare's data processing activity makes extensive use of the same network communications service used by its data communication customers, some of which are competitors of Tymshare in the data processing field, suggests that the protections against discrimination and preferential treatment afforded by compliance with the requirements of the Act (and the Commission's "maximum separation" rules

^{21/} Quoted in "Tymnet: Packet Switched Net in Disguise?", Computerworld, October 23, 1974, p. 21 (Attachment G hereto).

^{22/} Packet Communications, Inc., 43 FCC2d 922, at 925 (1973).

developed in the Computer Inquiry)^{23/} are even more necessary.^{24/}

53. By virtue of the fact that the Tymnet activity is inconsistent with the Commission's maximum separation principles enunciated in the Computer Inquiry, provides a switched data communications service similar to those twice found (PCI and Telenet, supra) by the Commission to be common carrier service offerings, and is in all respects a communication service offering for hire, it represents an even more obvious case of unlawful resale than does the RCA Joint User Service. Therefore, the Commission must either require Tymshare to operate its Tymnet communications service pursuant to the requirements of Title II of the Act, and pursuant to the Commission's rules regarding the separation of data processing and communication services, or else it must reverse its previous decisions in which it concluded that the services proposed by PCI and Telenet constitute common carrier undertakings subject to certification and other applicable requirements of the Act.

V. THE APPROPRIATE NATURE AND EXTENT OF REGULATION OF ENTITIES ENGAGED IN RESALE

54. At Item 12 of its Notice, the Commission asks:

"How should the Commission regulate the entities reselling communications services and facilities?"

This question, read literally, would appear to assume that such entities must be regulated in some manner by the Commission. However, at paragraph

^{23/} See Section 64.702 of the Rules, discussed at paragraph 13 supra.

^{24/} Where a carrier "hauls for the public and also for private purposes, there is an opportunity to discriminate in favor of itself against other shippers in the rate charges, the facility furnished, or the quality of service rendered." Delaware, Lackawanna and Western R. Co. v. United States, 231 U.S. 363, 370 (1913).

